

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Diana Hynek 09/28/2003
Departmental Paperwork Clearance Officer
Office of the Chief Information Officer
14th and Constitution Ave. NW.
Room 6625
Washington, DC 20230

In accordance with the Paperwork Reduction Act, OMB has taken the following action on your request for approval of the reinstatement of an information collection received on 08/18/2003.

TITLE: Basic Requirements for All Marine Mammal Special
Exception Permits to Take, Import and Export
Marine Mammals, and for Maintaining a Captive
Marine Mammal Inventory under the Marine

AGENCY FORM NUMBER(S): None

ACTION : APPROVED WITHOUT CHANGE

OMB NO.: 0648-0084

EXPIRATION DATE: 09/30/2006

BURDEN:	RESPONSES	HOURS	COSTS(\$,000)
Previous	0	0	0
New	962	6,411	2
Difference	962	6,411	2
Program Change		6,411	2
Adjustment		0	0

TERMS OF CLEARANCE: None

OMB Authorizing Official Title

Donald R. Arbuckle Deputy Administrator, Office of
Information and Regulatory Affairs

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

1. Agency/Subagency originating request	2. OMB control number b. <input type="checkbox"/> None a. _____ - _____
3. Type of information collection (<i>check one</i>) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested (<i>check one</i>) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated
	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No
	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
7. Title	
8. Agency form number(s) (<i>if applicable</i>)	
9. Keywords	
10. Abstract	
11. Affected public (<i>Mark primary with "P" and all others that apply with "x"</i>) a. <input type="checkbox"/> Individuals or households d. <input type="checkbox"/> Farms b. <input type="checkbox"/> Business or other for-profit e. <input type="checkbox"/> Federal Government c. <input type="checkbox"/> Not-for-profit institutions f. <input type="checkbox"/> State, Local or Tribal Government	12. Obligation to respond (<i>check one</i>) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden (<i>in thousands of dollars</i>) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection (<i>Mark primary with "P" and all others that apply with "X"</i>) a. <input type="checkbox"/> Application for benefits e. <input type="checkbox"/> Program planning or management b. <input type="checkbox"/> Program evaluation f. <input type="checkbox"/> Research c. <input type="checkbox"/> General purpose statistics g. <input type="checkbox"/> Regulatory or compliance d. <input type="checkbox"/> Audit	16. Frequency of recordkeeping or reporting (<i>check all that apply</i>) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission) Name: _____ Phone: _____

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator or head of MB staff for L.O.s, or of the Director of a Program or Staff Office)	
Signature	Date
Signature of NOAA Clearance Officer	
Signature	Date

SUPPORTING STATEMENT
APPLICATIONS AND REPORTS FOR
SCIENTIFIC RESEARCH, AND ENHANCEMENT PERMITS
UNDER THE MARINE MAMMAL PROTECTION ACT, THE FUR SEAL ACT
AND THE ENDANGERED SPECIES ACT

OMB CONTROL NO. 0648-0084

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

The Marine Mammal Protection Act (16 U.S.C. 1361 et seq.; MMPA), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.; ESA), and the Fur Seal Act of 1966 (16 U.S.C. 1151 et seq.; FSA) (hereafter referenced collectively as "the Acts"), mandate the protection and conservation of marine mammals and prohibit the taking, importation, and export of marine mammal species or their parts or products except under certain limited circumstances. Exemptions for scientific research, enhancement, photography for educational or commercial purposes, public display, and certain other limited purposes are allowed provided permits are applied for and received or other necessary authorization obtained. This information collection applies to the marine mammal species of cetaceans (whales, dolphins and porpoises) and pinnipeds (seals and sea lions for which NOAA Fisheries is responsible). Appropriate sections of the Acts are attached. [Attachment 1]

The Marine Mammal Protection Act (MMPA) - Section 101(a)(1) of the MMPA states: "...consistent with the provisions of section 104, permits may be issued by the Secretary for taking and importation for purposes of scientific research, public display or enhancing the survival or recovery of a species or stock...". Section 104(b) requires that "Any permit issued under this section shall (1) be consistent with any applicable regulation established by the Secretary...and (2) specify (A) the number and kind of animals which are authorized to be taken or imported, (B) the location and manner (which manner must be determined by the Secretary to be humane) in which they may be taken, or from which they may be imported, (C) the period during which the permit is valid, and (D) any other terms or conditions which the Secretary deems appropriate."

Section 104(c) states: "Any permit...shall specify, in addition to the conditions required by subsection (b) of this section, the methods of capture, supervision, care, and transportation which must be observed..." And finally: "Any person authorized to take or import a marine mammal for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock shall furnish to the Secretary a report on all activities carried out by him pursuant to that authority."

Under section 104(c)(3)(C) of the MMPA, as amended, persons may be authorized to take marine mammals in the wild by Level B harassment, as defined in 50 CFR 216.3, for purposes of *bona fide* scientific research. Interested persons must submit a letter of intent in accordance with the interim final rule published on October 3, 1994 and submit certain information outlined at 50 CFR 216.45(b).

Section 104(c)(8) of the MMPA, as amended, eliminates the need for a permit or additional authorization to possess, sell, purchase, transport, or export captive marine mammals, or their progeny, for public display purposes, provided the recipient and holder meet applicable criteria. However, a 15-day advance notification is required prior to the transport, transfer, sale, or other disposition of captive marine mammals. (See Transport Notification in Item 2.)

Further, Section 104(c)(10) of the MMPA, as amended, directs the Secretary to establish and maintain an inventory of captive marine mammals consisting only of the information specified in Section 104(c)(10)(A-H). (See Marine Mammal Data Sheet in Item 2.)

In addition to the Section 104 provisions, Section 402(b) states that the Secretary shall "...collect and update, periodically, existing information on..." marine mammal rehabilitation procedures and practices.

The Endangered Species Act (ESA) - Section 9 of the ESA prohibits, except under permit, importation, taking, possessing or selling any endangered species of fish or wildlife. In accordance with section 10(a)(1)(A) the Secretary may permit, under such terms and conditions as he/she may prescribe, taking of listed species for scientific purposes or to enhance the propagation or survival of the affected species. A final rule published in the Federal Register in May 1996 revised 50 CFR 222.23(b) permit application procedures so that marine mammal permits will be issued in accordance with the provisions of 50 CFR part 216, subpart D.

The Fur Seal Act of 1966 (FSA) - Section 104 of the FSA, as amended in 1983, provides for the Secretary to conduct research on fur seal resources of the North Pacific and to permit, subject to such terms and conditions as he deems desirable, the taking, transportation, importation, exportation, or possession of fur seals or their parts for educational, scientific, or exhibition purposes. Since northern fur seals are also marine mammals, to avoid duplication, applications for permits for scientific research are also processed under the MMPA regulations of part 216 subpart D (59 FR 50372, October 3, 1994).

Regulations at 50 CFR part 216.33 [published May 10, 1996 (61 FR 21926)] consolidated all permitting requirements under the MMPA, which provides clear procedures for the disposition of rehabilitated stranded marine mammals, ESA marine mammal permits, disposition of marine mammal parts, and reporting requirements. [Attachment 2]

Several statutory changes made to the MMPA in the 1994 amendments that impact information collection include: providing a General Authorization (GA) for *bona fide* research involving only Level B harassment; providing for the issuance of permits for educational and commercial

photography; eliminating the need for a public display permit for the transport, export, sale or other transfer of captive marine mammals (provided the recipient meets the three public display criteria); and eliminating NOAA Fisheries authority over captive care and maintenance issues as they relate to marine mammals maintained for public display purposes.

This information collection reflects the interim final regulations at 50 CFR part 216.45 that implement the GA for Level B harassment as well as final regulations that list requirements basic to all special exception permits and additional requirements applicable to each special exception purpose in separately identified sections (50 CFR 216.31-216.45). Final provisions implementing specific requirements for public display permits, previously codified at 50 CFR 216.39, have not yet been finalized but continue to be processed in accordance with 50 CFR 216.33. Applications for these permits will be processed according to previously established procedures. Application Instructions for Photography (50 CFR 216.42, Reserved) have not yet been proposed but applicants are currently directed to the OPR website that provides interim guidance for photography permit applications. The MMPA consolidated regulations are attached as Attachment 2.

Provisions regarding the final disposition of rehabilitated beached and stranded marine mammals under special exception permits including those imported under Section 109(h)(2) of the MMPA are found at 50 CFR 216.27(c).

Without an application, NOAA Fisheries would be unaware of the applicant's need for a permit; without the information, NOAA Fisheries, the Marine Mammal Commission, and interested public interests would be unable to determine whether the taking, import, export, or release/disposition was necessary, humane and in the best interest of both protected species and for the public at large. NOAA Fisheries would be unable to make the determinations and include the information that is required by the Acts to issue permits without receiving adequate information from applicants.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

This information collection includes: 1) Applications Instructions; 2) Marine Mammal Data Sheet; 3) Transport Notification; 4) Person/Holder/Facility Sheet; 5) Letters of Intent under the General Authorization; and 6) reports including the Marine Mammal Inventory Reports and Marine Mammal Transport Notifications.

The Director, Office of Protected Resources, NOAA Fisheries will use the information to determine the sufficiency of the application to determine that the taking, importation, or export meets the goals and objectives of the Acts and regulations and as a basis for a decision on issuance or denial of the permit. If certain information required by the Acts is not provided, neither NOAA Fisheries nor the Marine Mammal Commission can complete a review of the

application and the application processing is suspended. The Marine Mammal Commission is required by the MMPA to review all permit applications. If a permit cannot be issued, any taking, import, or export would be a violation of the Acts and subject to prosecution thereunder.

The reports required annually by the permits (§216.38) of the regulations and §104(c)(1) of the MMPA) are used by NOAA Fisheries to ensure that the terms and conditions of the permit are being complied with, evaluate the potential impacts of research activities on marine mammals, and coordinate permit activities to ensure that unnecessarily duplicative and potentially cumulative harassments are kept to a minimum.

The regulations implementing the authority to issue permits for scientific research, enhancement and public display under the three statutes were previously found in three sets of regulations (50 CFR 215.11, 50 CFR 216.30 -.44, and 50 CFR 222.23). The interim final rule published in October 3, 1994 and the final rule published in May 1996, have now provided for the consolidation of three sets of permit processing provisions into a single Subpart D-Special Exception Permits (50 CFR 216.31 - .45). Subpart D also includes regulations that implement the GA for research involving only Level B harassment, and reserved sections for public display revisions and photography.

NOAA Fisheries also amended 50 CFR 216.26 to allow the collection or import of soft marine mammal parts that are sloughed, excreted or otherwise discharged naturally by marine mammals in the wild (§216.26(b)) for purposes of bona fide scientific research and enhancement, without issuance of a permit. Provisions also include the registration of such parts and new provisions regarding the export of these parts.

The Application Instructions for Scientific Research (SR) and Enhancement (EN), and Public Display (PD) permits, are available in separate documents [Attachments 3 and 5]. The discussion of the information collection requirements for applications will follow the sequence found in the Application Instructions for Scientific Research and Enhancement Permits since these are the most comprehensive, and will reference the appropriate section of the regulations or law. Then will follow discussions of Public Display Permit Application Instructions and Letters of Intent under the General Authorization. Application Instructions for Photography (50 CFR 216.42, Reserved) have not yet been proposed but applicants are currently directed to the OPR website that provides interim guidance for photography permit applications. Requirements are similar to those for Letters of Intent under the General Authorization.

Scientific Research/Enhancement Application Instructions are attached (Attachment 3). Justification of each section is also attached (Attachment 4). Interim Photography guidelines are attached (Attachment 5), and the application instructions for public display and transfer/transport notifications (Attachment 6).

It is anticipated that the information collected will be disseminated to the public or used to support publicly disseminated information. As explained in the preceding paragraphs, the information gathered has utility. NOAA Fisheries will retain control over the information and

safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See response #10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Prior to dissemination, the information will be subjected to quality control measures and a pre-dissemination review pursuant to Section 515 of Public Law 106-554.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

The Office of Protected Resources (OPR), NOAA Fisheries, has automated many aspects of its permit program. Reporting requirements for captive marine mammals have been reduced to a periodic update of computer generated data sheets by the Permit Program Information Management System (PPIMS), a DOS-based relational database software configured to support administration of the permit database and permit processing. PPIMS replaced less sophisticated software, and was developed to improve permit processing and to facilitate and simplify both permit applicant and permit holder interaction with NOAA Fisheries including maintenance of the Marine Mammal Inventory. The existing marine mammal inventory and transport databases are undergoing additional updates under a Cooperative Agreement between NOAA Fisheries and ISIS, and when fully operational will, in some part, be available on a web-page to marine mammal inventory holders. Discussions are underway and, once security concerns have been addressed, NOAA Fisheries hopes to place the 600+ page Marine Mammal Inventory Report-Summary (MMIRS) on the web-site. The MMIRS is frequently requested and portions are made available under the Freedom of Information Act (FOIA).

The application instructions for scientific research/enhancement permits, commercial and education photography, and general authorization for scientific research are currently available on the OPR website [http://www.nmfs.noaa.gov/prot_res/overview/permits.html]. Discussions are underway to develop an online application form that will be user friendly and simpler for applicants to apply for scientific research permits. When the final regulations for photography and public display permits have been finalized, these regulations will also be available on the OPR website. In the interim, public display and photography guidelines are also posted on the OPR website along with all regulations and the MMPA and ESA.

In response to Department of Commerce directives, NOAA/NOAA Fisheries is developing an agency policy regarding the availability of agency records including permit applications through the web-site. Once this policy has been established, OPR will, along with other NOAA Fisheries Offices, proceed with implementation. Currently, the priorities are to update the data base software; develop necessary mechanisms for electronic submission by respondents of applications and reports, including data sheets and transport notifications; and then establish time frames and procedures for public access to respondents' submissions and/or permits issued. The MMPA requires an annual report to Congress that includes a summary of permit activities. The public can access these annual reports through the OPR Electronic Reading Room. Copies of the

Acts and the implementing regulations are also available in the Reading Room. Once fully automated, NOAA Fisheries hopes to realize a reduction of 20-40 percent in burden hours associated with applications and reports.

4. Describe efforts to identify duplication.

Under the ESA and MMPA, the U.S. Fish and Wildlife Service, Department of the Interior, has similar permit regulations for species under their purview. It also has sole authority for issuing permits under CITES. For applicants importing or exporting marine mammals or marine mammal parts, two applications may be required, one for the MMPA and/or ESA, and one for CITES. Since the FWS is the designated Management Authority for CITES, issuing CITES permits for all CITES-listed plants and wildlife, some duplication is unavoidable.

Additionally, to further eliminate duplication, applicants that apply for permits involving species under the jurisdiction of both Agencies, may apply to one Agency rather than submitting two separate applications. NOAA Fisheries has management responsibility for more than 90 marine species, FWS has jurisdiction for five (5) species of marine mammals. The Agencies have developed guidelines to assist applicants in applying to one Agency and the Agencies will coordinate efforts on behalf of the applicant.

There is no overlap or duplication for marine mammal actions under the ESA or FSA as NOAA Fisheries regulations address requirements of both laws and a single application and permit covers all requirements of both laws.

NOAA Fisheries no longer has shared responsibility for captive care of marine mammals; the Department of Agriculture now has sole responsibility for the standards governing the humane handling, care, treatment and transportation of captive marine mammals under the Animal Welfare Act. Consequently, NOAA Fisheries no longer collects information from public display applicants regarding their facilities. To obtain a public display permit or to receive a captive marine mammal, applicants must first obtain proper Department of Agriculture, Animal and Plant Health Inspection Service (APHIS) certification. All three agencies meet on a regular basis to identify and eliminate unnecessary duplication and are parties to a Memorandum of Agreement that outlines their respective roles under the MMPA.

NOAA Fisheries has not identified instances where similar information required for permit applications/authorization requests, reports, or for stranded marine mammal disposition is available other than through submission by the applicant/permit holder, others holding captive marine mammals, or a facility authorized to rehabilitate beached or stranded marine mammals.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

Applicants are requested to provide only that information required by the Acts or necessary to determine the sufficiency of an application. The information on an application is used by NOAA

Fisheries, the Marine Mammal Commission and the public as a basis for a decision on permit issuance or denial. Applicants are asked to provide only that information relating to issuance criteria. For applications involving the take of fur seals or threatened or endangered marine mammal species, NOAA Fisheries issues one permit under joint authority of the MMPA, FSA and ESA rather than three separate permits, and their respective reporting requirements. In addition, because the majority of permit applicants and holders use computers in the conduct of their research and administration of their public display activities, NOAA Fisheries intends to provide PC-based custom software to simplify and to make application and report submission more consistent.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

Sufficient information must be provided with each original permit application or amendment. The information is submitted one time only unless the submission is inadequate in which case the application is returned. Unless an amendment of the permit is necessary, the applicant need not submit new information. As permits are valid for up to five years, less frequent collection of information is not appropriate for these applications.

Reports on activities conducted under permits must be submitted annually. Annual reports for scientific research and enhancement permits must summarize taking activities under the permit during the reporting period, including an assessment of whether the research/ enhancement conducted under the permit during the reporting period addressed the stated objectives of the research/enhancement, as well as basic updates to application information. If this information is not submitted, NOAA Fisheries will have no way of assessing the impact of the take on the species or if the permit holder has violated the MMPA/ESA or its implementing regulations. For permits involving captive maintenance, reports include an updated protected species inventory report, including a description of any protected species exported. Only that information necessary to update the information provided in the permit application or as updated in earlier reports must be submitted. Reports for public display permits consist of any updates to the marine mammal inventory that have not been reported during the year. Intrusive research is reported separately under a scientific research permit.

For public display animals, Section 104(c)(2)(E) of the MMPA states "...No marine mammal... may be sold, purchased, exported or transported unless The Secretary is notified of such action no later than 15 days before such action..." Therefore, whenever a significant change in the status of a captive animal occurs (e.g., birth, transfer, death), a special report must be submitted. However, reports submission timing varies depending upon the status change and other factors. A timely report eliminates record keeping by the applicant since this information would be required to be submitted annually. As the basic captive animal data is maintained in the PPIMS database and generated as needed, NOAA Fisheries retains the record keeping responsibility and the permit holder need only ascertain its accuracy. Less frequent reporting would shift the record keeping burden to the permit holder and would impede NOAA Fisheries' responsibilities to monitor permit activities and compliance with permit conditions.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

The collection is consistent with OMB guidelines except for the requirements that a report be submitted within 30 days of a particular event, i.e., death, birth, sale, etc.; and a notification at least 15 days in advance of a proposed transport or export. Sections 104(c)(8)(B)(i) and (ii) of the MMPA stipulate these 30-day and 15-day notifications respectively. Also, 50 CFR 216.27(a)(2) requires rehabilitation facilities to provide 15 days' notice prior to the release of any rehabilitated marine mammal to the wild and 30 days' notice prior to the release of any rehabilitated imported marine mammal; or 15 days' notice prior to the transfer of custody/transport to another entity for scientific research, enhancement or public display purposes. Section 216.45 of the Regulations requires GA holders to notify the Regional Administrator at least two weeks in advance of starting the research to allow the RA to coordinate activities with others researchers that may be working in the area. The coordination of research decreases the impact of multiple activities on the marine species. Additionally, research conducted under a GA does not include endangered species. Therefore, if endangered species are taken by GA holders, it must be reported within 12 hours and the research discontinued. Taking an endangered species under the GA is in violation of the MMPA, ESA and implementing regulations.

8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

In response to the PRA *Federal Register* notice, 68 FR 13281, published on March 19, 2003, NOAA Fisheries did not receive any comments.

NOAA Fisheries consults on an ongoing basis with the scientific research/public display community, and other interested parties, with regard to the availability of data, frequency of collection, clarity of instructions and record keeping, disclosure or reporting format, and on the data elements to be recorded, disclosed or reported. NOAA Fisheries encouraged these parties to comment on the reporting section of the proposed revised permit regulations, and when the 1994 Amendments were enacted, held several public meetings to discuss the implications, and later solicited comments and suggestions on the draft formats for the Marine Mammal Data Sheet and the Marine Mammal Transport Notification. All comments were considered and many recommendations were incorporated into the May 1996 final rule.

NOAA Fisheries attends the Bi-ennial Conference on Marine Mammals, the Annual Zoo Registrars' Meetings and National and International Marine Mammal Conference and other marine mammal meetings and workshops to maintain communication with record-keepers.

Under Section 102 of the MMPA, NOAA Fisheries has entered into a Cooperative Agreement with International Species Information System (ISIS), to administer the marine mammal inventory and transport notification system on behalf of NOAA Fisheries through the modification of the ISIS windows-based software. This effort will eliminate duplicative reporting and reduce the costs associated with updating the PPIMS software.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

No payment or gifts have been provided to any respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

No assurance of confidentiality is given. A notice of receipt of permit applications is required by statute to be published in the Federal Register and applications and supporting documentation are available for review by the public at every stage of processing and during the life of the permit. The provisions at 50 CFR 216.33 implement these statutory requirements, and are referenced in and attached to the Application Instructions. All permit documentation including reports and the Marine Mammal Inventory is subject to the Freedom of Information Act (FOIA). However, all information in curriculum vitae that is subject to the Privacy Act is redacted when released under FOIA.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Neither the Applications, Letters of Intent or the Reports require the submission of information of a sensitive nature.

12. Provide an estimate in hours of the burden of the collection of information.

Total Number of Respondents - 481
Estimated total annual hours - 6,411

59 New Applications
189 Permit Holders
50 GA Researchers
178 Holders/Marine Mammals
5 Rehabilitation Facilities

Total number of Record-Keepers - 280

Applications					
SR/EN	35/yr	x	29 hrs	=	1015 hrs
PD	4/yr	x	20 hrs	=	80 hrs
Photography (PH)	10/yr	x	10 hrs	=	100 hrs
GA Ltrs of Intent	10/yr	x	20 hrs	=	200 hrs
Retain/Transfer					
Rehabilitated Animals	5/yr	x	2 hrs	=	10 hrs
Amendments					
Major	50/yr	x	19 hrs	=	950 hrs
Minor/Authorizations	105/yr	x	3 hrs	=	315 hrs
GA changes	5/yr	x	3 hrs	=	15 hrs
Reports - Annual/Final					
SR/EN	175/yr	x	12 hrs	=	2100 hrs
PH	50/yr	x	2 hrs	=	100 hrs
PD	5/yr	x	2 hrs	=	10 hrs
GA	50/yr	x	12 hrs	=	600 hrs
MM Inventory	178/yr	x	2 hrs	=	356 hrs
SUBTOTAL					5851 hrs
RECORD KEEPING					
SR/EN Reports	175/yr	x	2 hrs	=	350 hrs
GA Reports	50/yr	x	2 hrs	=	100 hrs
PH Reports	50/yr	x	2 hrs	=	100 hrs
PD Reports	5/yr	x	2 hrs	=	10 hrs
SUBTOTAL					560 hrs
GRAND TOTAL					6411 HOURS

SUMMARY OF CHANGES

<u>Type of Request</u>	<u>Current Estimate</u>	<u>Prev Estimate</u>	<u>Change Estimate</u>
Applications			
SR/EN/PD/PH	1195	845	+ 350
Letters of Intent	200	300	- 100
Requests to Retain/transfer rehabilitated animals	10	10	-0
Amendments			
Major	950	1450	- 500
Minor/Authorizations	315	225	- 90
GA	15	15	- 0
Reports			
PD Reports	10	10	- 0
SR/EN Reports	2100	1500	+ 600
GA Reports	600	900	- 300
PH Reports	100	100	- 0
Release/Disposition of Rehabilitated animals	- 0 -	- 0 -	- 0
MM Inventory	356	300	+ 56
Waivers and 2001 revisions	- 0	11	- 11
Record keeping	560	510	+ 50
TOTAL	6,411	6,176*	+235

*The OMB-83I for the 2001 revision to this collection had a 300 hour error, not reflected in these figures. See #15 below.

The number of respondents averages 481 per year; a slight increase of 20 from the last submission of 461. There have been a number of changes within this universe. The number of New Applicants has increased from 51 to 59 in this submission because of an increase in funding for Steller sea lion research which generated a number of new applicants.. There was a decrease in the number of GA researchers from an estimated 75 in the last submission to an estimated 50. Additionally, the number of Rehabilitation Facilities requesting authorization to retain/transfer rehabilitated marine mammals remained unchanged. Although there are an average of 38 facilities designated for rehabilitation under the NOAA Fisheries Marine Mammal Stranding Network, a limited number of those designated facilities submit requests for authorization to retain marine mammals or to transfer them to another holder. There was a slight increase in PD display permit applicants (from 1 to 4). This is attributed to an increase in requests to import animals for display. New but not included in this universe are applications to take non-marine

mammals such as sea turtles, endangered fish [except Pacific salmonids], and white abalone. Applications for scientific research or enhancement for these actions are currently submitted under OMB No. 0648-0402. However, our intention is to consolidate these instructions into one document to provide respondents with one-stop shopping for all permit actions.

Applications - The total burden hours for all permit applications increased to 1605. This total estimated burden hours include an increase in the number of scientific research applications received overall. The increased burden, however, reflects a decrease in the estimated burdens for Letters of Intent as the number of applications received under the General Authorization for Scientific Research decreased. The estimated burden hours for photography permit applications and requests to retain or transfer beached and stranded marine mammals undergoing rehabilitation at designated facilities remain unchanged.

Amendments - We estimate 1280 hours for amendments to permit applications including changes under the GA. This submission shows a decrease of 410 hours. The reduced burden shows a decrease in burden hours required for submission of major amendments from 29 to 19 since the information required is less than needed for an initial application. The estimated burden for minor amendments and authorizations increased because there was an increase in the number of requests from 75 to 105.

Reports/Notifications - With the increase in new applications and changes in the marine mammal inventory, the number of reports required annually increased. During this submission cycle some GA's expired and the number of new letters of intent have decreased; therefore, the reporting burden has decreased. We estimate an average burden of 356 hours for Marine Mammal Inventory changes based on 178 changes. There are approximately 150 holders of captive marine mammals but the burdens for respondents will vary due to differences in the size of their animal collection, and the types and frequency of the changes. For example, a holder that maintains marine mammals in several facilities and transfers these animals from one facility to another will submit more transport notifications than a holder that maintains animals at one just one facility.

Record Keeping - Under the MMPA and ESA, permit holders are usually required to retain records for a period of up to five years. NOAA Fisheries policy is that once a respondent has submitted a final report, requirements for record keeping have been met. For permit holders holding captive marine mammals for public display, once the Marine Mammal Inventory report consisting of the Marine Mammal Data Sheet, Transport Notification and PHF Sheet have been submitted, further record keeping by the respondents is discretionary since inventory data are maintained in a NOAA Fisheries database.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).

The total annual operations and maintenance cost burden is estimated at \$1,712. These costs were estimated from discussions with permit applicants/holders, and with NOAA Fisheries

staff who process permits. The estimates include costs for postage at \$.37, overnight express service deliveries at approx. \$25 per package, and express postal deliveries at \$13.00 per package.

We do not estimate any additional costs beyond those necessitated by normal business practices and/or research purposes. To publish research results or to justify research funding, a permit holder needs to maintain detailed records. For holders of captive marine mammals, as licensed Exhibitor's under the AWA they are already required to maintain medical/inventory records for all animals in their collections, including marine mammals. These records are subject to inspection by APHIS at any time. Therefore, we are not aware of any additional costs incurred by holders associated with this information collection.

14. Provide estimates of annualized cost to the Federal government.

The estimated annual cost to the Federal Government is \$222,520 calculated at \$20 per hour as follows:

<u>Type of Action</u>	<u>Processing Time</u>	<u>Avg./yr</u>	<u>Total</u>
Applications	80 hrs	59	\$94,400
Letters of Intent	20 hrs	10	4,000
Amendments			
Major	50 hrs	50	50,000
Minor/Authorizations	10 hrs	105	21,000
GA changes	5 hrs	5	500
Retain/Transfer Rehab'd			
Marine Mammals	2 hrs	5	200
Reports			
Public Display	3 hrs	5	300
Scientific Res./Enhance	10 hrs	175	35,000
General Authorizations	5 hrs	50	5,000
Photography	5 hrs	50	5,000
MM Inventory Changes	2 hrs	178	7,120

To process marine mammal applications, we are required to address the National Environmental Policy Act (NEPA) either by documenting that the action is categorically excluded from NEPA or drafting an environmental assessment or environmental impact statement which adds more time to processing some documents.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.

There is an 11 hour program reduction from elimination of the revisions approved in 2001. The final rule containing those requirements has not been published. The requirements may be addressed in future submissions if a final rule appears likely.

There is a -300 hour adjustment to correct an error in the 2001 OMB-83I figures. The remaining portion of the hour change reflects an increased number of applications, amendments and reports. The increase in costs reflect the adjustments.

16. For collections whose results will be published, outline the plans for tabulation and publication.

Permit-related activities are summarized and published in the MMPA Annual Report to Congress. NOAA Fisheries uses information from permit reports to monitor activities authorized by permits, and to monitor requirements of the Acts. Additionally, due to the continuing nature of the marine mammal inventory updates, a hard copy of the "Marine Mammal Inventory Report-Summary by Holder and Species," is available at any time, upon request.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

We are not seeking this approval.

18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.

There are no exceptions to the certification statement.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

The information collection does not employ statistical methods.



-CITE-

16 USC Sec. 1371

01/22/02

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 31 - MARINE MAMMAL PROTECTION

SUBCHAPTER II - CONSERVATION AND PROTECTION OF MARINE MAMMALS

-HEAD-

Sec. 1371. Moratorium on taking and importing marine mammals and
marine mammal products

-STATUTE-

(a) Imposition; exceptions

There shall be a moratorium on the taking and importation of
marine mammals and marine mammal products, commencing on the
effective date of this chapter, during which time no permit may be
issued for the taking of any marine mammal and no marine mammal or
marine mammal product may be imported into the United States except
in the following cases:

(1) Consistent with the provisions of section 1374 of this
title, permits may be issued by the Secretary for taking, and
importation for purposes of scientific research, public display,

photography for educational or commercial purposes, or enhancing the survival or recovery of a species or stock, or for importation of polar bear parts (other than internal organs) taken in sport hunts in Canada. Such permits, except permits issued under section 1374(c)(5) of this title, may be issued if the taking or importation proposed to be made is first reviewed by the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under subchapter III of this chapter. The Commission and Committee shall recommend any proposed taking or importation, other than importation under section 1374(c)(5) of this title, which is consistent with the purposes and policies of section 1361 of this title. If the Secretary issues such a permit for importation, the Secretary shall issue to the importer concerned a certificate to that effect in such form as the Secretary of the Treasury prescribes, and such importation may be made upon presentation of the certificate to the customs officer concerned.

(2) Marine mammals may be taken incidentally in the course of commercial fishing operations and permits may be issued therefor under section 1374 of this title subject to regulations prescribed by the Secretary in accordance with section 1373 of this title, or in lieu of such permits, authorizations may be granted therefor under section 1387 of this title, subject to regulations prescribed under that section by the Secretary

without regard to section 1373 of this title. Such authorizations may be granted under subchapter IV of this chapter with respect to purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean, subject to regulations prescribed under that subchapter by the Secretary without regard to section 1373 of this title. In any event it shall be the immediate goal that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate. The Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards. For purposes of applying the preceding sentence, the Secretary -

(A) shall insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effects on ocean mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States;

(B) in the case of yellowfin tuna harvested with purse seine nets in the eastern tropical Pacific Ocean, and products therefrom, to be exported to the United States, shall require that the government of the exporting nation provide documentary evidence that -

(i)(I) the tuna or products therefrom were not banned from importation under this paragraph before the effective date of section 4 of the International Dolphin Conservation Program Act; or

(II) the tuna or products therefrom were harvested after the effective date of section 4 of the International Dolphin Conservation Program Act by vessels of a nation which participates in the International Dolphin Conservation Program, and such harvesting nation is either a member of the Inter-American Tropical Tuna Commission or has initiated (and within 6 months thereafter completed) all steps required of applicant nations, in accordance with article V, paragraph 3 of the Convention establishing the Inter-American Tropical Tuna Commission, to become a member of that organization;

(ii) such nation is meeting the obligations of the International Dolphin Conservation Program and the obligations of membership in the Inter-American Tropical Tuna Commission, including all financial obligations; and

(iii) the total dolphin mortality limits, and per-stock per-year dolphin mortality limits permitted for that nation's vessels under the International Dolphin Conservation Program do not exceed the limits determined for 1997, or for any year thereafter, consistent with the objective of progressively reducing dolphin mortality to a level approaching zero

through the setting of annual limits and the goal of eliminating dolphin mortality, and requirements of the International Dolphin Conservation Program;

(C) shall not accept such documentary evidence if -

(i) the government of the harvesting nation does not provide directly or authorize the Inter-American Tropical Tuna Commission to release complete and accurate information to the Secretary in a timely manner -

(I) to allow determination of compliance with the International Dolphin Conservation Program; and

(II) for the purposes of tracking and verifying compliance with the minimum requirements established by the Secretary in regulations promulgated under section 1385(f) of this title; or

(ii) after taking into consideration such information, findings of the Inter-American Tropical Tuna Commission, and any other relevant information, including information that a nation is consistently failing to take enforcement actions on violations which diminish the effectiveness of the International Dolphin Conservation Program, the Secretary, in consultation with the Secretary of State, finds that the harvesting nation is not in compliance with the International Dolphin Conservation Program.

(D) shall require the government of any intermediary nation to certify and provide reasonable proof to the Secretary that

it has not imported, within the preceding six months, any yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation to the United States under subparagraph (B);

(E) shall, six months after importation of yellowfin tuna or tuna products has been banned under this section, certify such fact to the President, which certification shall be deemed to be a certification for the purposes of section 1978(a) of title 22 for as long as such ban is in effect; and

(F)(i) except as provided in clause (ii), in the case of fish or products containing fish harvested by a nation whose fishing vessels engage in high seas driftnet fishing, shall require that the government of the exporting nation provide documentary evidence that the fish or fish product was not harvested with a large-scale driftnet in the South Pacific Ocean after July 1, 1991, or in any other water of the high seas after January 1, 1993, and

(ii) in the case of tuna or a product containing tuna harvested by a nation whose fishing vessels engage in high seas driftnet fishing, shall require that the government of the exporting nation provide documentary evidence that the tuna or tuna product was not harvested with a large-scale driftnet anywhere on the high seas after July 1, 1991.

For purposes of subparagraph (F), the term ''driftnet'' has the

meaning given such term in section 4003 of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 (16 U.S.C. 1822 note), except that, until January 1, 1994, the term ''driftnet'' does not include the use in the northeast Atlantic Ocean of gillnets with a total length not to exceed five kilometers if the use is in accordance with regulations adopted by the European Community pursuant to the October 28, 1991, decision by the Council of Fisheries Ministers of the Community.

(3)(A) The Secretary, on the basis of the best scientific evidence available and in consultation with the Marine Mammal Commission, is authorized and directed, from time to time, having due regard to the distribution, abundance, breeding habits, and times and lines of migratory movements of such marine mammals, to determine when, to what extent, if at all, and by what means, it is compatible with this chapter to waive the requirements of this section so as to allow taking, or importing of any marine mammal, or any marine mammal product, and to adopt suitable regulations, issue permits, and make determinations in accordance with sections 1372, 1373, 1374, and 1381 of this title permitting and governing such taking and importing, in accordance with such determinations: Provided, however, That the Secretary, in making such determinations must be assured that the taking of such marine mammal is in accord with sound principles of resource protection and conservation as provided in the purposes and policies of this chapter: Provided, further, however, That no

marine mammal or no marine mammal product may be imported into the United States unless the Secretary certifies that the program for taking marine mammals in the country of origin is consistent with the provisions and policies of this chapter. Products of nations not so certified may not be imported into the United States for any purpose, including processing for exportation.

(B) Except for scientific research purposes, photography for educational or commercial purposes, or enhancing the survival or recovery of a species or stock as provided for in paragraph (1) of this subsection, or as provided for under paragraph (5) of this subsection, during the moratorium no permit may be issued for the taking of any marine mammal which has been designated by the Secretary as depleted, and no importation may be made of any such mammal.

(4)(A) Except as provided in subparagraphs (B) and (C), the provisions of this chapter shall not apply to the use of measures

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(i) by the owner of fishing gear or catch, or an employee or agent of such owner, to deter a marine mammal from damaging the gear or catch;

(ii) by the owner of other private property, or an agent, bailee, or employee of such owner, to deter a marine mammal from damaging private property;

(iii) by any person, to deter a marine mammal from

endangering personal safety; or

(iv) by a government employee, to deter a marine mammal from damaging public property,

so long as such measures do not result in the death or serious injury of a marine mammal.

(B) The Secretary shall, through consultation with appropriate experts, and after notice and opportunity for public comment, publish in the Federal Register a list of guidelines for use in safely deterring marine mammals. In the case of marine mammals listed as endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), the Secretary shall recommend specific measures which may be used to nonlethally deter marine mammals. Actions to deter marine mammals consistent with such guidelines or specific measures shall not be a violation of this chapter.

(C) If the Secretary determines, using the best scientific information available, that certain forms of deterrence have a significant adverse effect on marine mammals, the Secretary may prohibit such deterrent methods, after notice and opportunity for public comment, through regulation under this chapter.

(D) The authority to deter marine mammals pursuant to subparagraph (A) applies to all marine mammals, including all stocks designated as depleted under this chapter.

(5)(A) Upon request therefor by citizens of the United States who engage in a specified activity (other than commercial

fishing) within a specified geographical region, the Secretary shall allow, during periods of not more than five consecutive years each, the incidental, but not intentional, taking by citizens while engaging in that activity within that region of small numbers of marine mammals of a species or population stock if the Secretary, after notice (in the Federal Register and in newspapers of general circulation, and through appropriate electronic media, in the coastal areas that may be affected by such activity) and opportunity for public comment -

(i) finds that the total of such taking during each five-year (or less) period concerned will have a negligible impact on such species or stock and will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) of this section or section 1379(f) of this title or, in the case of a cooperative agreement under both this chapter and the Whaling Convention Act of 1949 (16 U.S.C. 916 et seq.), pursuant to section 1382(c) of this title; and

(ii) prescribes regulations setting forth -

(I) permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of

such species or stock for subsistence uses; and

(II) requirements pertaining to the monitoring and reporting of such taking.

(B) The Secretary shall withdraw, or suspend for a time certain (either on an individual or class basis, as appropriate) the permission to take marine mammals under subparagraph (A) pursuant to a specified activity within a specified geographical region if the Secretary finds, after notice and opportunity for public comment (as required under subparagraph (A) unless subparagraph (C)(i) applies), that -

(i) the regulations prescribed under subparagraph (A) regarding methods of taking, monitoring, or reporting are not being substantially complied with by a person engaging in such activity; or

(ii) the taking allowed under subparagraph (A) pursuant to one or more activities within one or more regions is having, or may have, more than a negligible impact on the species or stock concerned.

(C)(i) The requirement for notice and opportunity for public comment in subparagraph (B) shall not apply in the case of a suspension of permission to take if the Secretary determines that an emergency exists which poses a significant risk to the well-being of the species or stock concerned.

(ii) Sections 1373 and 1374 of this title shall not apply to the taking of marine mammals under the authority of this

paragraph.

(D)(i) Upon request therefor by citizens of the United States who engage in a specified activity (other than commercial fishing) within a specific geographic region, the Secretary shall authorize, for periods of not more than 1 year, subject to such conditions as the Secretary may specify, the incidental, but not intentional, taking by harassment of small numbers of marine mammals of a species or population stock by such citizens while engaging in that activity within that region if the Secretary finds that such harassment during each period concerned -

(I) will have a negligible impact on such species or stock, and

(II) will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) of this section, or section 1379(f) of this title or pursuant to a cooperative agreement under section 1388 of this title.

(ii) The authorization for such activity shall prescribe, where applicable -

(I) permissible methods of taking by harassment pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such

species or stock for taking for subsistence uses pursuant to subsection (b) of this section or section 1379(f) of this title or pursuant to a cooperative agreement under section 1388 of this title,

(II) the measures that the Secretary determines are necessary to ensure no unmitigable adverse impact on the availability of the species or stock for taking for subsistence uses pursuant to subsection (b) of this section or section 1379(f) of this title or pursuant to a cooperative agreement under section 1388 of this title, and

(III) requirements pertaining to the monitoring and reporting of such taking by harassment, including requirements for the independent peer review of proposed monitoring plans or other research proposals where the proposed activity may affect the availability of a species or stock for taking for subsistence uses pursuant to subsection (b) of this section or section 1379(f) of this title or pursuant to a cooperative agreement under section 1388 of this title.

(iii) The Secretary shall publish a proposed authorization not later than 45 days after receiving an application under this subparagraph and request public comment through notice in the Federal Register, newspapers of general circulation, and appropriate electronic media and to all locally affected communities for a period of 30 days after publication. Not later than 45 days after the close of the public comment period, if the

Secretary makes the findings set forth in clause (i), the Secretary shall issue an authorization with appropriate conditions to meet the requirements of clause (ii).

(iv) The Secretary shall modify, suspend, or revoke an authorization if the Secretary finds that the provisions of clauses (i) or (ii) are not being met.

(v) A person conducting an activity for which an authorization has been granted under this subparagraph shall not be subject to the penalties of this chapter for taking by harassment that occurs in compliance with such authorization.

(E)(i) During any period of up to 3 consecutive years, the Secretary shall allow the incidental, but not the intentional, taking by persons using vessels of the United States or vessels which have valid fishing permits issued by the Secretary in accordance with section 1824(b) of this title, while engaging in commercial fishing operations, of marine mammals from a species or stock designated as depleted because of its listing as an endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) if the Secretary, after notice and opportunity for public comment, determines that

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(I) the incidental mortality and serious injury from commercial fisheries will have a negligible impact on such species or stock;

(II) a recovery plan has been developed or is being developed for such species or stock pursuant to the Endangered Species Act of 1973; and

(III) where required under section 1387 of this title, a monitoring program is established under subsection (d) of such section, vessels engaged in such fisheries are registered in accordance with such section, and a take reduction plan has been developed or is being developed for such species or stock.

(ii) Upon a determination by the Secretary that the requirements of clause (i) have been met, the Secretary shall publish in the Federal Register a list of those fisheries for which such determination was made, and, for vessels required to register under section 1387 of this title, shall issue an appropriate permit for each authorization granted under such section to vessels to which this paragraph applies. Vessels engaged in a fishery included in the notice published by the Secretary under this clause which are not required to register under section 1387 of this title shall not be subject to the penalties of this chapter for the incidental taking of marine mammals to which this paragraph applies, so long as the owner or master of such vessel reports any incidental mortality or injury of such marine mammals to the Secretary in accordance with section 1387 of this title.

(iii) If, during the course of the commercial fishing season, the Secretary determines that the level of incidental mortality

or serious injury from commercial fisheries for which a determination was made under clause (i) has resulted or is likely to result in an impact that is more than negligible on the endangered or threatened species or stock, the Secretary shall use the emergency authority granted under section 1387 of this title to protect such species or stock, and may modify any permit granted under this paragraph as necessary.

(iv) The Secretary may suspend for a time certain or revoke a permit granted under this subparagraph only if the Secretary determines that the conditions or limitations set forth in such permit are not being complied with. The Secretary may amend or modify, after notice and opportunity for public comment, the list of fisheries published under clause (ii) whenever the Secretary determines there has been a significant change in the information or conditions used to determine such list.

(v) Sections 1373 and 1374 of this title shall not apply to the taking of marine mammals under the authority of this subparagraph.

(vi) This subparagraph shall not govern the incidental taking of California sea otters and shall not be deemed to amend or repeal the Act of November 7, 1986 (Public Law 99-625; 100 Stat. 3500).

(6)(A) A marine mammal product may be imported into the United States if the product -

(i) was legally possessed and exported by any citizen of the United States in conjunction with travel outside the United States, provided that the product is imported into the United States by the same person upon the termination of travel;

(ii) was acquired outside of the United States as part of a cultural exchange by an Indian, Aleut, or Eskimo residing in Alaska; or

(iii) is owned by a Native inhabitant of Russia, Canada, or Greenland and is imported for noncommercial purposes in conjunction with travel within the United States or as part of a cultural exchange with an Indian, Aleut, or Eskimo residing in Alaska.

(B) For the purposes of this paragraph, the term -

(i) "'Native inhabitant of Russia, Canada, or Greenland'" means a person residing in Russia, Canada, or Greenland who is related by blood, is a member of the same clan or ethnological grouping, or shares a common heritage with an Indian, Aleut, or Eskimo residing in Alaska; and

(ii) "'cultural exchange'" means the sharing or exchange of ideas, information, gifts, clothing, or handicrafts between an Indian, Aleut, or Eskimo residing in Alaska and a Native inhabitant of Russia, Canada, or Greenland, including rendering of raw marine mammal parts as part of such exchange into clothing or handicrafts through carving, painting, sewing, or decorating.

(b) Exemptions for Alaskan natives

Except as provided in section 1379 of this title, the provisions of this chapter shall not apply with respect to the taking of any marine mammal by any Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean if such taking -

(1) is for subsistence purposes; or

(2) is done for purposes of creating and selling authentic native articles of handicrafts and clothing: Provided, That only authentic native articles of handicrafts and clothing may be sold in interstate commerce: And provided further, That any edible portion of marine mammals may be sold in native villages and towns in Alaska or for native consumption. For the purposes of this subsection, the term "'authentic native articles of handicrafts and clothing'" means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to weaving, carving, stitching, sewing, lacing, beading, drawing and painting; and

(3) in each case, is not accomplished in a wasteful manner.

Notwithstanding the preceding provisions of this subsection, when, under this chapter, the Secretary determines any species or stock

of marine mammal subject to taking by Indians, Aleuts, or Eskimos to be depleted, he may prescribe regulations upon the taking of such marine mammals by any Indian, Aleut, or Eskimo described in this subsection. Such regulations may be established with reference to species or stocks, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the purposes of this chapter. Such regulations shall be prescribed after notice and hearing required by section 1373 of this title and shall be removed as soon as the Secretary determines that the need for their imposition has disappeared. In promulgating any regulation or making any assessment pursuant to a hearing or proceeding under this subsection or section 1386(b)(2) of this title, or in making any determination of depletion under this subsection or finding regarding unmitigable adverse impacts under subsection (a)(5) of this section that affects stocks or persons to which this subsection applies, the Secretary shall be responsible for demonstrating that such regulation, assessment, determination, or finding is supported by substantial evidence on the basis of the record as a whole. The preceding sentence shall only be applicable in an action brought by one or more Alaska Native organizations representing persons to which this subsection applies.

(c) Taking in defense of self or others

It shall not be a violation of this chapter to take a marine mammal if such taking is imminently necessary in self-defense or to

save the life of a person in immediate danger, and such taking is reported to the Secretary within 48 hours. The Secretary may seize and dispose of any carcass.

(d) Good Samaritan exemption

It shall not be a violation of this chapter to take a marine mammal if -

(1) such taking is imminently necessary to avoid serious injury, additional injury, or death to a marine mammal entangled in fishing gear or debris;

(2) reasonable care is taken to ensure the safe release of the marine mammal, taking into consideration the equipment, expertise, and conditions at hand;

(3) reasonable care is exercised to prevent any further injury to the marine mammal; and

(4) such taking is reported to the Secretary within 48 hours.

(e) Chapter not to apply to incidental takings by United States

citizens employed on foreign vessels outside United States EEZ

The provisions of this chapter shall not apply to a citizen of the United States who incidentally takes any marine mammal during fishing operations outside the United States exclusive economic zone (as defined in section 1802 of this title) when employed on a foreign fishing vessel of a harvesting nation which is in compliance with the International Dolphin Conservation Program.



-CITE-

16 USC Sec. 1374

01/22/02

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 31 - MARINE MAMMAL PROTECTION

SUBCHAPTER II - CONSERVATION AND PROTECTION OF MARINE MAMMALS

-HEAD-

Sec. 1374. Permits

-STATUTE-

(a) Issuance

The Secretary may issue permits which authorize the taking or importation of any marine mammal. Permits for the incidental taking of marine mammals in the course of commercial fishing operations may only be issued as specifically provided for in sections (FOOTNOTE 1) 1371(a)(5) or 1416 of this title, or subsection (h) of this section.

(FOOTNOTE 1) So in original. Probably should be ''section''.

(b) Requisite provisions

Any permit issued under this section shall -

(1) be consistent with any applicable regulation established by

the Secretary under section 1373 of this title, and

(2) specify -

(A) the number and kind of animals which are authorized to be taken or imported,

(B) the location and manner (which manner must be determined by the Secretary to be humane) in which they may be taken, or from which they may be imported,

(C) the period during which the permit is valid, and

(D) any other terms or conditions which the Secretary deems appropriate.

In any case in which an application for a permit cites as a reason for the proposed taking the overpopulation of a particular species or population stock, the Secretary shall first consider whether or not it would be more desirable to transplant a number of animals (but not to exceed the number requested for taking in the application) of that species or stock to a location not then inhabited by such species or stock but previously inhabited by such species or stock.

(c) Importation for scientific research, public display, or enhancing survival or recovery of species or stock

(1) Any permit issued by the Secretary which authorizes the taking or importation of a marine mammal for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock shall specify, in addition to the conditions

required by subsection (b) of this section, the methods of capture, supervision, care, and transportation which must be observed pursuant to such taking or importation. Any person authorized to take or import a marine mammal for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock shall furnish to the Secretary a report on all activities carried out by him pursuant to that authority.

(2)(A) A permit may be issued to take or import a marine mammal for the purpose of public display only to a person which the Secretary determines -

(i) offers a program for education or conservation purposes that is based on professionally recognized standards of the public display community;

(ii) is registered or holds a license issued under 7 U.S.C. 2131 et seq.; and

(iii) maintains facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis and that access to such facilities is not limited or restricted other than by charging of an admission fee.

(B) A permit under this paragraph shall grant to the person to which it is issued the right, without obtaining any additional permit or authorization under this chapter, to -

(i) take, import, purchase, offer to purchase, possess, or transport the marine mammal that is the subject of the permit; and

(ii) sell, export, or otherwise transfer possession of the marine mammal, or offer to sell, export, or otherwise transfer possession of the marine mammal -

(I) for the purpose of public display, to a person that meets the requirements of clauses (i), (ii), and (iii) of subparagraph (A);

(II) for the purpose of scientific research, to a person that meets the requirements of paragraph (3); or

(III) for the purpose of enhancing the survival or recovery of a species or stock, to a person that meets the requirements of paragraph (4).

(C) A person to which a marine mammal is sold or exported or to which possession of a marine mammal is otherwise transferred under the authority of subparagraph (B) shall have the rights and responsibilities described in subparagraph (B) with respect to the marine mammal without obtaining any additional permit or authorization under this chapter. Such responsibilities shall be limited to -

(i) for the purpose of public display, the responsibility to meet the requirements of clauses (i), (ii), and (iii) of subparagraph (A),

(ii) for the purpose of scientific research, the responsibility to meet the requirements of paragraph (3), and

(iii) for the purpose of enhancing the survival or recovery of

a species or stock, the responsibility to meet the requirements of paragraph (4).

(D) If the Secretary -

(i) finds in concurrence with the Secretary of Agriculture, that a person that holds a permit under this paragraph for a marine mammal, or a person exercising rights under subparagraph (C), no longer meets the requirements of subparagraph (A)(ii) and is not reasonably likely to meet those requirements in the near future, or

(ii) finds that a person that holds a permit under this paragraph for a marine mammal, or a person exercising rights under subparagraph (C), no longer meets the requirements of subparagraph (A)(i) or (iii) and is not reasonably likely to meet those requirements in the near future,

the Secretary may revoke the permit in accordance with subsection (e) of this section, seize the marine mammal, or cooperate with other persons authorized to hold marine mammals under this chapter for disposition of the marine mammal. The Secretary may recover from the person expenses incurred by the Secretary for that seizure.

(E) No marine mammal held pursuant to a permit issued under subparagraph (A), or by a person exercising rights under subparagraph (C), may be sold, purchased, exported, or transported unless the Secretary is notified of such action no later than 15 days before such action, and such action is for purposes of public

display, scientific research, or enhancing the survival or recovery of a species or stock. The Secretary may only require the notification to include the information required for the inventory established under paragraph (10).

(3)(A) The Secretary may issue a permit under this paragraph for scientific research purposes to an applicant which submits with its permit application information indicating that the taking is required to further a bona fide scientific purpose. The Secretary may issue a permit under this paragraph before the end of the public review and comment period required under subsection (d)(2) of this section if delaying issuance of the permit could result in injury to a species, stock, or individual, or in loss of unique research opportunities.

(B) No permit issued for purposes of scientific research shall authorize the lethal taking of a marine mammal unless the applicant demonstrates that a nonlethal method of conducting the research is not feasible. The Secretary shall not issue a permit for research which involves the lethal taking of a marine mammal from a species or stock that is depleted, unless the Secretary determines that the results of such research will directly benefit that species or stock, or that such research fulfills a critically important research need.

(C) Not later than 120 days after April 30, 1994, the Secretary shall issue a general authorization and implementing regulations

allowing bona fide scientific research that may result only in taking by Level B harassment of a marine mammal. Such authorization shall apply to persons which submit, by 60 days before commencement of such research, a letter of intent via certified mail to the Secretary containing the following:

(i) The species or stocks of marine mammals which may be harassed.

(ii) The geographic location of the research.

(iii) The period of time over which the research will be conducted.

(iv) The purpose of the research, including a description of how the definition of bona fide research as established under this chapter would apply.

(v) Methods to be used to conduct the research.

Not later than 30 days after receipt of a letter of intent to conduct scientific research under the general authorization, the Secretary shall issue a letter to the applicant confirming that the general authorization applies, or, if the proposed research is likely to result in the taking (including Level A harassment) of a marine mammal, shall notify the applicant that subparagraph (A) applies.

(4)(A) A permit may be issued for enhancing the survival or recovery of a species or stock only with respect to a species or stock for which the Secretary, after consultation with the Marine Mammal Commission and after notice and opportunity for public

comment, has first determined that -

(i) taking or importation is likely to contribute significantly to maintaining or increasing distribution or numbers necessary to ensure the survival or recovery of the species or stock; and

(ii) taking or importation is consistent (I) with any conservation plan adopted by the Secretary under section 1383b(b) of this title or any recovery plan developed under section 1533(f) of this title for the species or stock, or (II) if there is no conservation or recovery plan in place, with the Secretary's evaluation of the actions required to enhance the survival or recovery of the species or stock in light of the factors that would be addressed in a conservation plan or a recovery plan.

(B) A permit issued in accordance with this paragraph may allow the captive maintenance of a marine mammal from a depleted species or stock only if the Secretary -

(i) determines that captive maintenance is likely to contribute to the survival or recovery of the species or stock by maintaining a viable gene pool, increasing productivity, providing biological information, or establishing animal reserves;

(ii) determines that the expected benefit to the affected species or stock outweighs the expected benefit of alternatives which do not require removal of animals from the wild; and

(iii) requires that the marine mammal or its progeny be returned to the natural habitat of the species or stock as soon as feasible, consistent with the objectives of any applicable conservation plan or recovery plan, or of any evaluation by the Secretary under subparagraph (A).

The Secretary may allow the public display of such a marine mammal only if the Secretary determines that such display is incidental to the authorized maintenance and will not interfere with the attainment of the survival or recovery objectives.

(5)(A) The Secretary may issue a permit for the importation of polar bear parts (other than internal organs) taken in sport hunts in Canada to an applicant which submits with its permit application proof that the polar bear was legally harvested in Canada by the applicant. Such a permit shall be issued if the Secretary, in consultation with the Marine Mammal Commission and after notice and opportunity for public comment, finds that -

(i) Canada has a monitored and enforced sport hunting program consistent with the purposes of the Agreement on the Conservation of Polar Bears;

(ii) Canada has a sport hunting program based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level;

(iii) the export and subsequent import are consistent with the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora and other international

agreements and conventions; and

(iv) the export and subsequent import are not likely to contribute to illegal trade in bear parts.

(B) The Secretary shall establish and charge a reasonable fee for permits issued under this paragraph. All fees collected under this paragraph shall be available to the Secretary until expended for use in developing and implementing cooperative research and management programs for the conservation of polar bears in Alaska and Russia pursuant to section 1383(d) of this title.

(C)(i) The Secretary shall undertake a scientific review of the impact of permits issued under this paragraph on the polar bear population stocks in Canada within 2 years after April 30, 1994. The Secretary shall provide an opportunity for public comment during the course of such review, and shall include a response to such public comment in the final report on such review.

(ii) The Secretary shall not issue permits under this paragraph after September 30, 1996, if the Secretary determines, based on the scientific review, that the issuance of permits under this paragraph is having a significant adverse impact on the polar bear population stocks in Canada. The Secretary may review such determination annually thereafter, in light of the best scientific information available, and shall complete the review not later than January 31 in any year a review is undertaken. The Secretary may issue permits under this paragraph whenever the Secretary

determines, on the basis of such annual review, that the issuance of permits under this paragraph is not having a significant adverse impact on the polar bear population stocks in Canada.

(D) The Secretary of the Interior shall, expeditiously after the expiration of the applicable 30 day period under subsection (d)(2) of this section, issue a permit for the importation of polar bear parts (other than internal organs) from polar bears taken in sport hunts in Canada before April 30, 1994, to each applicant who submits, with the permit application, proof that the polar bear was legally harvested in Canada by the applicant. The Secretary shall issue such permits without regard to the provisions of subparagraphs (A) and (C)(ii) of this paragraph, subsection (d)(3) of this section, and sections 1371 and 1372 of this title. This subparagraph shall not apply to polar bear parts that were imported before June 12, 1997.

(6) A permit may be issued for photography for educational or commercial purposes involving marine mammals in the wild only to an applicant which submits with its permit application information indicating that the taking will be limited to Level B harassment, and the manner in which the products of such activities will be made available to the public.

(7) Upon request by a person for a permit under paragraph (2), (3), or (4) for a marine mammal which is in the possession of any person authorized to possess it under this chapter and which is determined under guidance under section 1421a(a) of this title not

to be releasable to the wild, the Secretary shall issue the permit to the person requesting the permit if that person -

(A) meets the requirements of clauses (i), (ii), and (iii) of paragraph (2)(A), in the case of a request for a permit under paragraph (2);

(B) meets the requirements of paragraph (3), in the case of a request for a permit under that paragraph; or

(C) meets the requirements of paragraph (4), in the case of a request for a permit under that paragraph.

(8)(A) No additional permit or authorization shall be required to possess, sell, purchase, transport, export, or offer to sell or purchase the progeny of marine mammals taken or imported under this subsection, if such possession, sale, purchase, transport, export, or offer to sell or purchase is -

(i) for the purpose of public display, and by or to, respectively, a person which meets the requirements of clauses (i), (ii), and (iii) of paragraph (2)(A);

(ii) for the purpose of scientific research, and by or to, respectively, a person which meets the requirements of paragraph (3); or

(iii) for the purpose of enhancing the survival or recovery of a species or stock, and by or to, respectively, a person which meets the requirements of paragraph (4).

(B)(i) A person which has a permit under paragraph (2), or a

person exercising rights under paragraph (2)(C), which has possession of a marine mammal that gives birth to progeny shall -

(I) notify the Secretary of the birth of such progeny within 30 days after the date of birth; and

(II) notify the Secretary of the sale, purchase, or transport of such progeny no later than 15 days before such action.

(ii) The Secretary may only require notification under clause (i) to include the information required for the inventory established under paragraph (10).

(C) Any progeny of a marine mammal born in captivity before April 30, 1994, and held in captivity for the purpose of public display shall be treated as though born after April 30, 1994.

(9) No marine mammal may be exported for the purpose of public display, scientific research, or enhancing the survival or recovery of a species or stock unless the receiving facility meets standards that are comparable to the requirements that a person must meet to receive a permit under this subsection for that purpose.

(10) The Secretary shall establish and maintain an inventory of all marine mammals possessed pursuant to permits issued under paragraph (2)(A), by persons exercising rights under paragraph (2)(C), and all progeny of such marine mammals. The inventory shall contain, for each marine mammal, only the following information which shall be provided by a person holding a marine mammal under this chapter:

(A) The name of the marine mammal or other identification.

(B) The sex of the marine mammal.

(C) The estimated or actual birth date of the marine mammal.

(D) The date of acquisition or disposition of the marine mammal by the permit holder.

(E) The source from whom the marine mammal was acquired including the location of the take from the wild, if applicable.

(F) If the marine mammal is transferred, the name of the recipient.

(G) A notation if the animal was acquired as the result of a stranding.

(H) The date of death of the marine mammal and the cause of death when determined.

(d) Application procedures; notice; hearing; review

(1) The Secretary shall prescribe such procedures as are necessary to carry out this section, including the form and manner in which application for permits may be made.

(2) The Secretary shall publish notice in the Federal Register of each application made for a permit under this section. Such notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data or views, with respect to the taking or importation proposed in such application.

(3) The applicant for any permit under this section must demonstrate to the Secretary that the taking or importation of any marine mammal under such permit will be consistent with the

purposes of this chapter and the applicable regulations established under section 1373 of this title.

(4) If within thirty days after the date of publication of notice pursuant to paragraph (2) of this subsection with respect to any application for a permit any interested party or parties request a hearing in connection therewith, the Secretary may, within sixty days following such date of publication, afford to such party or parties an opportunity for such a hearing.

(5) As soon as practicable (but not later than thirty days) after the close of the hearing or, if no hearing is held, after the last day on which data, or views, may be submitted pursuant to paragraph (2) of this subsection, the Secretary shall (A) issue a permit containing such terms and conditions as he deems appropriate, or (B) shall deny issuance of a permit. Notice of the decision of the Secretary to issue or to deny any permit under this paragraph must be published in the Federal Register within ten days after the date of issuance or denial.

(6) Any applicant for a permit, or any party opposed to such permit, may obtain judicial review of the terms and conditions of any permit issued by the Secretary under this section or of his refusal to issue such a permit. Such review, which shall be pursuant to chapter 7 of title 5, may be initiated by filing a petition for review in the United States district court for the district wherein the applicant for a permit resides, or has his principal place of business, or in the United States District Court

for the District of Columbia, within sixty days after the date on which such permit is issued or denied.

(e) Modification, suspension, and revocation

(1) The Secretary may modify, suspend, or revoke in whole or in part any permit issued by him under this section -

(A) in order to make any such permit consistent with any change made after the date of issuance of such permit with respect to any applicable regulation prescribed under section 1373 of this title,

(B) in any case in which a violation of the terms and conditions of the permit is found, or

(C) if, in the case of a permit under subsection (c)(5) of this section authorizing importation of polar bear parts, the Secretary, in consultation with the appropriate authority in Canada, determines that the sustainability of Canada's polar bear population stocks are being adversely affected or that sport hunting may be having a detrimental effect on maintaining polar bear population stocks throughout their range.

(2) Whenever the Secretary shall propose any modification, suspension, or revocation of a permit under this subsection, the permittee shall be afforded opportunity, after due notice, for a hearing by the Secretary with respect to such proposed modification, suspension, or revocation. Such proposed action by the Secretary shall not take effect until a decision is issued by

him after such hearing. Any action taken by the Secretary after such a hearing is subject to judicial review on the same basis as is any action taken by him with respect to a permit application under paragraph (5) of subsection (d) of this section.

(3) Notice of the modification, suspension, or revocation of any permit by the Secretary shall be published in the Federal Register within ten days from the date of the Secretary's decision.

(f) Possession of permit by issuee or his agent

Any permit issued under this section must be in the possession of the person to whom it is issued (or an agent of such person) during

-

(1) the time of the authorized or taking importation;

(2) the period of any transit of such person or agent which is incident to such taking or importation; and

(3) any other time while any marine mammal taken or imported under a such permit is in the possession of such person or agent. A duplicate copy of the issued permit must be physically attached to the container, package, enclosure, or other means of containment, in which the marine mammal is placed for purposes of storage, transit, supervision, or care.

(g) Fees

The Secretary shall establish and charge a reasonable fee for permits issued under this section.

(h) General permits

(1) Consistent with the regulations prescribed pursuant to

section 1373 of this title and to the requirements of section 1371 of this title, the Secretary may issue an annual permit to a United States purse seine fishing vessel for the taking of such marine mammals, and shall issue regulations to cover the use of any such annual permits.

(2) Such annual permits for the incidental taking of marine mammals in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean shall be governed by section 1416 of this title, subject to the regulations issued pursuant to section 1413 of this title.

-SOURCE-

(Pub. L. 92-522, title I, Sec. 104, Oct. 21, 1972, 86 Stat. 1034; Pub. L. 98-364, title I, Sec. 102, July 17, 1984, 98 Stat. 440; Pub. L. 100-711, Sec. 4(d), 5(d), Nov. 23, 1988, 102 Stat. 4767, 4769; Pub. L. 103-238, Sec. 5(b), Apr. 30, 1994, 108 Stat. 537; Pub. L. 105-18, title V, Sec. 5004, June 12, 1997, 111 Stat. 187; Pub. L. 105-42, Sec. 4(d), Aug. 15, 1997, 111 Stat. 1125; Pub. L. 105-277, div. A, Sec. 101(e) (title I), Oct. 21, 1998, 112 Stat. 2681-231, 2681-238; Pub. L. 106-31, title V, Sec. 5004(1), May 21, 1999, 113 Stat. 110.)

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REFERENCES IN TEXT

7 U.S.C. 2131 et seq., referred to in subsec. (c)(2)(A)(ii), is

SOURCE: 39 FR 1852, Jan. 15, 1974, unless otherwise noted.

Subpart A—Introduction

§216.1 Purpose of regulations.

The regulations in this part implement the Marine Mammal Protection Act of 1972, 86 Stat. 1027, 16 U.S.C. 1361–1407, Pub. L. 92–522, which, among other things, restricts the taking, possession, transportation, selling, offering for sale, and importing of marine mammals.

§216.2 Scope of regulations.

This part 216 applies solely to marine mammals and marine mammal products as defined in §216.3. For regulations under the MMPA, with respect to other marine mammals and marine mammal products, see 50 CFR part 18.

[39 FR 1852, Jan. 15, 1974, as amended at 59 FR 50375, Oct. 3, 1994]

§216.3 Definitions.

In addition to definitions contained in the MMPA, and unless the context otherwise requires, in this part 216:

Acts means, collectively, the Marine Mammal Protection Act of 1972, as amended, 16 U.S.C. 1361 *et seq.*, the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*, and the Fur Seal Act of 1966, as amended, 16 U.S.C. 1151 *et seq.*

Active sportfishing means paying passengers have their terminal fishing gear (lures, hooks, etc.) in the water in an attempt to catch fish or, in the case of fishing involving chumming, fishing is considered to be in progress from the instant fish have been sighted taking bait (boiling) during that chumming process.

Administrator, Northeast Region means Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298.

Administrator, Southeast Region means Administrator, Southeast Region, National Marine Fisheries Service, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432.

Administrator, Southwest Region means the Regional Administrator, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd.,

Suite 4200, Long Beach, CA 90802–4213, or his or her designee.

Agreement on the International Dolphin Conservation Program (Agreement on the IDCP) means the Agreement establishing the formal binding IDCP that was signed in Washington, DC on May 21, 1998.

Alaskan Native means a person defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)) (85 Stat. 588) as a citizen of the United States who is of one-fourth degree or more Alaska Indian (including Tsimishian Indians enrolled or not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood or combination thereof. The term includes any Native, as so defined, either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or group, of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any Native village or Native group. Any such citizen enrolled by the Secretary of the Interior pursuant to section 5 of the Alaska Native Claims Settlement Act shall be conclusively presumed to be an Alaskan Native for purposes of this part.

Article of handicraft means items made by an Indian, Aleut or Eskimo from the nonedible byproducts of fur seals taken for personal or family consumption which—

(1) Were commonly produced by Alaskan Natives on or before October 14, 1983;

(2) Are composed wholly or in some significant respect of natural materials, and;

(3) Are significantly altered from their natural form and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or similar mass copying devices. Improved methods of production utilizing modern implements such as sewing machines or modern tanning techniques at a tannery registered pursuant to §216.23(c) may be used so long as no large scale mass production industry results. Traditional native handicrafts include, but are not

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limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. The formation of traditional native groups, such as a cooperative, is permitted so long as no large scale mass production results.

Assistant Administrator means the Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Silver Spring, MD 20910, or his/her designee.

Authentic native articles of handicrafts and clothing means items made by an Indian, Aleut or Eskimo which (a) were commonly produced on or before December 21, 1972, and (b) are composed wholly or in some significant respect of natural materials, and (c) are significantly altered from their natural form and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or similar mass copying devices. Improved methods of production utilizing modern implements such as sewing machines or modern tanning techniques at a tannery registered pursuant to §216.23(c) may be used so long as no large scale mass production industry results. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. The formation of traditional native groups, such as a cooperative, is permitted so long as no large scale mass production results.

Bona fide scientific research: (1) Means scientific research on marine mammals conducted by qualified personnel, the results of which:

- (i) Likely would be accepted for publication in a refereed scientific journal;
- (ii) Are likely to contribute to the basic knowledge of marine mammal biology or ecology. (Note: This includes, for example, marine mammal parts in a properly curated, professionally accredited scientific collection); or
- (iii) Are likely to identify, evaluate, or resolve conservation problems.

(2) Research that is not on marine mammals, but that may incidentally take marine mammals, is not included in this definition (see sections 101(a)(3)(A), 101(a)(5)(A), and

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101(a)(5)(D) of the MMPA, and sections 7(b)(4) and 10(a)(1)(B) of the ESA).

Carrying capacity means the Regional Director's determination of the maximum amount of fish that a vessel can carry in short tons based on the greater of the amount indicated by the builder of the vessel, a marine surveyor's report, or the highest amount reported landed from any one trip.

Certified charter vessel means a fishing vessel of a non-U.S. flag nation, which is operating under the jurisdiction of the marine mammal laws and regulations of another, harvesting, nation by a formal declaration entered into by mutual agreement of the nations.

Co-investigator means the on-site representative of a principal investigator.

Commercial fishing operation means the lawful harvesting of fish from the marine environment for profit as part of an ongoing business enterprise. Such terms may include licensed commercial passenger fishing vessel (as defined) activities, but no other sportfishing activities, whether or not the fish so caught are subsequently sold.

Commercial passenger fishing vessel means any vessel licensed for commercial passenger fishing purposes within the State out of which it is operating and from which, while under charter or hire, persons are legally permitted to conduct sportfishing activities.

Custody means holding a live marine mammal pursuant to the conditional authority granted under the MMPA, and the responsibility therein for captive maintenance of the marine mammal.

Declaration of Panama means the declaration signed in Panama City, Republic of Panama, on October 4, 1995.

Director, Office of Protected Resources means Director, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

Dolphin Mortality Limit (DML) means the maximum allowable number of incidental dolphin mortalities per calendar year assigned to a vessel, unless a shorter time period is specified.

Endangered Species means a species or subspecies of marine mammal listed as "endangered" pursuant to the Endangered Species Act of 1973, 87 Stat. 884, Pub. L. 93-205 (see part 17 of this title).

ESA means the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

ETP means the eastern tropical Pacific Ocean which includes the Pacific Ocean area bounded by 40° N. latitude, 40° S. latitude, 160° W. longitude and the coastlines of North, Central and South America.

Facility means, in the context specific to captive marine mammals: (1) One or more permanent primary enclosures used to hold marine mammals captive (i.e., pools, lagoons) and associated infrastructure (i.e., equipment and supplies necessary for the care and maintenance of marine mammals) where these enclosures are either located within the boundaries of a single contiguous parcel of land and water, or are grouped together within the same general area within which enclosure-to-enclosure transport is expected to be completed in less than one hour; or

(2) A traveling display/exhibit, where the enclosure(s) and associated infrastructure is transported together with the marine mammals.

Feeding is offering, giving, or attempting to give food or non-food items to marine mammals in the wild. It includes operating a vessel or providing other platforms from which feeding is conducted or supported. It does not include the routine discard of bycatch during fishing operations or the routine discharge of waste or fish byproducts from fish processing plants or other platforms if the discharge is otherwise legal and is incidental to operation of the activity.

First exporter means the person or company that first exports the fish or fish product, or, in the case of shipments that are subject to the labeling requirements of 50 CFR part 247 and that only contain fish harvested by vessels of the United States, the first seller of the fish or fish product.

Fisheries Certificate of Origin means NOAA Form 370, as described in § 216.24(f)(5).

Force majeure means forces outside the vessel operator's or vessel owner's control that could not be avoided by the exercise of due care.

FSA means the Fur Seal Act of 1966, as amended, 16 U.S.C. 1151 *et seq.*

Fur seal means North Pacific fur seal, scientifically known as *Callorhinus ursinus*.

Hard part means any bone, tooth, baleen, treated pelt, or other part of a marine mammal that is relatively solid or durable.

Harvesting nation means the country under whose flag one or more fishing vessels are documented, or which has by formal declaration agreed to assert jurisdiction over one or more certified charter vessels, from which vessel(s) fish are caught that are a part of any cargo or shipment of fish to be imported into the United States, regardless of any intervening transshipments.

Humane means the method of taking, import, export, or other activity which involves the least possible degree of pain and suffering practicable to the animal involved.

Import means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the Customs laws of the United States; except that, for the purpose of any ban issued under 16 U.S.C. 1371(a)(2) on the importation of fish or fish products, the definition of "import" in § 216.24(f)(1)(ii) shall apply.

Incidental catch means the taking of a marine mammal (1) because it is directly interfering with commercial fishing operations, or (2) as a consequence of the steps used to secure the fish in connection with commercial fishing operations: *Provided*, That a marine mammal so taken must immediately be returned to the sea with a minimum of injury and further, that the taking of a marine mammal, which otherwise meets the requirements of this definition shall not be considered an incidental catch of that mammal if it is used subsequently to assist in commercial fishing operations.

Intentional purse seine set means that a tuna purse seine vessel or associated vessels chase marine mammals and subsequently make a purse seine set.

International Dolphin Conservation Program (IDCP) means the international program established by the

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agreement signed in La Jolla, California, in June 1992, as formalized, modified, and enhanced in accordance with the Declaration of Panama and the Agreement on the IDCP.

International Dolphin Conservation Program Act (IDCPA) means Public Law 105–42, enacted into law on August 15, 1997.

International Review Panel (IRP) means the International Review Panel established by the Agreement on the IDCP.

Intrusive research means a procedure conducted for bona fide scientific research involving: A break in or cutting of the skin or equivalent, insertion of an instrument or material into an orifice, introduction of a substance or object into the animal's immediate environment that is likely either to be ingested or to contact and directly affect animal tissues (i.e., chemical substances), or a stimulus directed at animals that may involve a risk to health or welfare or that may have an impact on normal function or behavior (i.e., audio broadcasts directed at animals that may affect behavior). For captive animals, this definition does not include:

(1) A procedure conducted by the professional staff of the holding facility or an attending veterinarian for purposes of animal husbandry, care, maintenance, or treatment, or a routine medical procedure that, in the reasonable judgment of the attending veterinarian, would not constitute a risk to the health or welfare of the captive animal; or

(2) A procedure involving either the introduction of a substance or object (i.e., as described in this definition) or a stimulus directed at animals that, in the reasonable judgment of the attending veterinarian, would not involve a risk to the health or welfare of the captive animal.

Label means a display of written, printed, or graphic matter on or affixed to the immediate container of any article.

Land or landing means to begin offloading any fish, to arrive in port with the intention of offloading fish, or to cause any fish to be offloaded.

Large-scale driftnet means a gillnet that is composed of a panel or panels of

webbing, or a series of such gillnets, with a total length of 2.5 kilometers or more that is used on the high seas and allowed to drift with the currents and winds for the purpose of harvesting fish by entangling the fish in the webbing of the net.

Level A Harassment means any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild.

Level B Harassment means any act of pursuit, torment, or annoyance which has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering but which does not have the potential to injure a marine mammal or marine mammal stock in the wild.

Marine environment means the oceans and the seas, including estuarine and brackish waters.

Marine mammal means those specimens of the following orders, which are morphologically adapted to the marine environment, whether alive or dead, and any part thereof, including but not limited to, any raw, dressed or dyed fur or skin: Cetacea (whales and porpoises), Pinnipedia, other than walrus (seals and sea lions).

MMPA means the Marine Mammal Protection Act of 1972, as amended, 16 U.S.C. 1361 *et seq.*

Native village or town means any community, association, tribe, band, clan or group.

Optimum sustainable population is a population size which falls within a range from the population level of a given species or stock which is the largest supportable within the ecosystem to the population level that results in maximum net productivity. Maximum net productivity is the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and/or growth less losses due to natural mortality.

Per-stock per-year dolphin mortality limit means the maximum allowable

number of incidental dolphin mortalities and serious injuries from a specified stock per calendar year, as established under the IDCP.

Pregnant means pregnant near term.

Pribilovians means Indians, Aleuts, and Eskimos who live on the Pribilof Islands.

Principal investigator means the individual primarily responsible for the taking, importation, export, and any related activities conducted under a permit issued for scientific research or enhancement purposes.

Public display means an activity that provides opportunities for the public to view living marine mammals at a facility holding marine mammals captive.

Regional Director means the Director, Southwest Region, NMFS, 501 W. Ocean Blvd., Long Beach, CA 90802, or his/her designee.

Rehabilitation means treatment of beached and stranded marine mammals taken under section 109(h)(1) of the MMPA or imported under section 109(h)(2) of the MMPA, with the intent of restoring the marine mammal's health and, if necessary, behavioral patterns.

Secretary shall mean the Secretary of Commerce or his authorized representative.

Serious injury means any injury that will likely result in mortality.

Sexual harassment means any unwelcome sexual advance, request for sexual favors, or other verbal and physical conduct of a sexual nature which has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Soft part means any marine mammal part that is not a hard part. Soft parts do not include urine or fecal material.

South Pacific Ocean means any waters of the Pacific Ocean that lie south of the equator.

Stranded or stranded marine mammal means a marine mammal specimen under the jurisdiction of the Secretary:

(1) If the specimen is dead, and is on a beach or shore, or is in the water within the Exclusive Economic Zone of the United States; or

(2) If the specimen is alive, and is on a beach or shore and is unable to re-

turn to the water, or is in the water within the Exclusive Economic Zone of the United States where the water is so shallow that the specimen is unable to return to its natural habitat under its own power.

Subsistence means the use of marine mammals taken by Alaskan Natives for food, clothing, shelter, heating, transportation, and other uses necessary to maintain the life of the taker or those who depend upon the taker to provide them with such subsistence.

Subsistence uses means the customary and traditional uses of fur seals taken by Pribilovians for direct personal or family consumption as food, shelter, fuel, clothing, tools or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fur seals taken for personal or family consumption; and for barter, or sharing for personal or family consumption. As used in this definition—

(1) *Family* means all persons related by blood, marriage, or adoption, or any person living within a household on a permanent basis.

(2) *Barter* means the exchange of fur seals or their parts, taken for subsistence uses—

(i) For other wildlife or fish or their parts, or

(ii) For other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

Take means to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill any marine mammal. This includes, without limitation, any of the following: The collection of dead animals, or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in disturbing or molesting a marine mammal; and feeding or attempting to feed a marine mammal in the wild.

Threatened species means a species of marine mammal listed as "threatened" pursuant to the Endangered Species Act of 1973, 87 Stat. 884, Pub. L. 93-205.

Trip means a voyage starting when a vessel leaves port with all fish wells

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empty of fish and ending when a vessel unloads all of its fish.

Tuna product means any food product processed for retail sale and intended for human or animal consumption that contains an item listed in §216.24(f)(2)(i) or (ii), but does not include perishable items with a shelf life of less than 3 days.

Wasteful manner means any taking or method of taking which is likely to result in the killing of marine mammals beyond those needed for subsistence, subsistence uses, or for the making of authentic native articles of handicrafts and clothing, or which results in the waste of a substantial portion of the marine mammal and includes, without limitation, the employment of a method of taking which is not likely to assure the capture or killing of a marine mammal, or which is not immediately followed by a reasonable effort to retrieve the marine mammal.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §216.3, see the List of Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

EFFECTIVE DATE NOTES: 1. At 63 FR 66076, Dec. 1, 1998, in §216.3, the definition *Administrator, Southeast Region* was added, effective Jan. 1, 1999 through Sept. 30, 2004.

2. At 64 FR 28120, May 25, 1999, in §216.3, the definition *Administrator, Northeast Region* was added, effective July 1, 1999 through June 30, 2004.

§216.4 Other laws and regulations.

(a) *Federal*. Nothing in this part, nor any permit issued under authority of this part, shall be construed to relieve a person from any other requirements imposed by a statute or regulation of the United States, including any applicable statutes or regulations relating to wildlife and fisheries, health, quarantine, agriculture, or customs.

(b) *State laws or regulations*. See part 403 of this chapter.

[39 FR 1852, Jan. 15, 1974, as amended at 41 FR 36662, Aug. 31, 1976; 58 FR 65134, Dec. 13, 1993]

§216.5 Payment of penalty.

The respondent shall have 30 days from receipt of the final assessment decision within which to pay the penalty assessed. Upon a failure to pay the pen-

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alty, the Secretary may request the Attorney General to institute a civil action in the appropriate United States District Court to collect the penalty.

[39 FR 1852, Jan. 15, 1974. Redesignated at 46 FR 61652, Dec. 18, 1981]

§216.6 Forfeiture and return of seized property.

(a) Whenever any cargo or marine mammal or marine mammal product has been seized pursuant to section 107 of the MMPA, the Secretary shall expedite any proceedings commenced under these regulations.

(b) Whenever a civil penalty has been assessed by the Secretary under these regulations, any cargo, marine mammal, or marine mammal product seized pursuant to section 107 of the MMPA shall be subject to forfeiture. If respondent voluntarily forfeits any such seized property or the monetary value thereof without court proceedings, the Secretary may apply the value thereof, if any, as determined by the Secretary, toward payment of the civil penalty.

(c) Whenever a civil penalty has been assessed under these regulations, and whether or not such penalty has been paid, the Secretary may request the Attorney General to institute a civil action in an appropriate United States District Court to compel forfeiture of such seized property or the monetary value thereof to the Secretary for disposition by him in such manner as he deems appropriate. If no judicial action to compel forfeiture is commenced within 30 days after final decision-making assessment of a civil penalty, pursuant to §216.60, such seized property shall immediately be returned to the respondent.

(d) If the final decision of the Secretary under these regulations is that respondent has committed no violation of the MMPA or of any permit or regulations issued thereunder, any marine mammal, marine mammal product, or other cargo seized from respondent in connection with the proceedings under these regulations, or the bond or other monetary value substituted therefor, shall immediately be returned to the respondent.

(e) If the Attorney General commences criminal proceedings pursuant to section 105(b) of the MMPA, and

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product consists solely of a marine mammal taken before such date.

(b) The prohibitions contained in §216.12(c) (3) and (4) shall not apply to marine mammals or marine mammal products imported into the United States before the date on which a notice is published in the FEDERAL REGISTER with respect to the designation of the species or stock concerned as depleted or endangered.

(c) Section 216.12(b) shall not apply to articles imported into the United States before the effective date of the foreign law making the taking or sale, as the case may be, of such marine mammals or marine mammal products unlawful.

[39 FR 1852, Jan. 15, 1974, as amended at 56 FR 43888, Sept. 5, 1991; 59 FR 50376, Oct. 3, 1994]

§216.26 Collection of certain marine mammal parts without prior authorization.

Notwithstanding any other provision of this subpart:

(a) Any bones, teeth or ivory of any dead marine mammal may be collected from a beach or from land within $\frac{1}{4}$ of a mile of the ocean. The term *ocean* includes bays and estuaries.

(b) Notwithstanding the provisions of subpart D, soft parts that are sloughed, excreted, or discharged naturally by a living marine mammal in the wild may be collected or imported for bona fide scientific research and enhancement, provided that collection does not involve the taking of a living marine mammal in the wild.

(c) Any marine mammal part collected under paragraph (a) of this section or any marine mammal part collected and imported under paragraph (b) of this section must be registered and identified, and may be transferred or otherwise possessed, in accordance with §216.22(c). In registering a marine mammal part collected or imported under paragraph (b) of this section, the person who collected or imported the part must also state the scientific research or enhancement purpose for which the part was collected or imported.

(d) No person may purchase, sell or trade for commercial purposes any ma-

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rine mammal part collected or imported under this section.

(e) The export of parts collected without prior authorization under paragraph (b) of this section may occur if consistent with the provisions at §216.37(d) under subpart D.

[39 FR 1852, Jan. 15, 1974, as amended at 59 FR 50376, Oct. 3, 1994; 61 FR 21933, May 10, 1996]

§216.27 Release, non-releasability, and disposition under special exception permits for rehabilitated marine mammals.

(a) *Release requirements.* (1) Any marine mammal held for rehabilitation must be released within six months of capture or import unless the attending veterinarian determines that:

(i) The marine mammal might adversely affect marine mammals in the wild;

(ii) Release of the marine mammal to the wild will not likely be successful given the physical condition and behavior of the marine mammal; or

(iii) More time is needed to determine whether the release of the marine mammal to the wild will likely be successful. Releasability must be reevaluated at intervals of no less than six months until 24 months from capture or import, at which time there will be a rebuttable presumption that release into the wild is not feasible.

(2) The custodian of the rehabilitated marine mammal shall provide written notification prior to any release into the wild.

(i) Notification shall be provided to:

(A) The NMFS Regional Director at least 15 days in advance of releasing any beached or stranded marine mammal, unless advance notice is waived in writing by the Regional Director; or

(B) The Office Director at least 30 days in advance of releasing any imported marine mammal.

(ii) Notification shall include the following:

(A) A description of the marine mammal, including its physical condition and estimated age;

(B) The date and location of release; and

(C) The method and duration of transport prior to release.

(3) The Regional Director, or the Office Director as appropriate, may:

- (i) Require additional information prior to any release;
- (ii) Change the date or location of release, or the method or duration of transport prior to release;
- (iii) Impose additional conditions to improve the likelihood of success or to monitor the success of the release; or
- (iv) Require other disposition of the marine mammal.

(4) All marine mammals must be released near wild populations of the same species, and stock if known, unless a waiver is granted by the Regional Director or the Office Director.

(5) All marine mammals released must be tagged or marked in a manner acceptable to the Regional Director or the Office Director. The tag number or description of the marking must be reported to the Regional Director or Office Director following release.

(b) *Non-releasability and postponed determinations.* (1) The attending veterinarian shall provide the Regional Director or Office Director with a written report setting forth the basis of any determination under paragraphs (a)(1)(i) through (iii) of this section.

(2) Upon receipt of a report under paragraph (b)(1) of this section, the Regional Director or Office Director, in their sole discretion, may:

- (i) Order the release of the marine mammal;
- (ii) Order continued rehabilitation for an additional 6 months; or
- (iii) Order other disposition as authorized.

(3) No later than 30 days after a marine mammal is determined unreleasable in accordance with paragraphs (a)(1)(i) through (iii) of this section, the person with authorized custody must:

- (i) Request authorization to retain or transfer custody of the marine mammal in accordance with paragraph (c) of this section, or;
- (ii) Humanely euthanize the marine mammal or arrange any other disposition of the marine mammal authorized by the Regional Director or Office Director.

(4) Notwithstanding any of the provisions of this section, the Office Director may require use of a rehabilitated

marine mammal for any activity authorized under subpart D in lieu of animals taken from the wild.

(5) Any rehabilitated beached or stranded marine mammal placed on public display following a non-releasability determination under paragraph (a)(1) of this section and pending disposition under paragraph (c) of this section, or any marine mammal imported for medical treatment otherwise unavailable and placed on public display pending disposition after such medical treatment is concluded, must be held in captive maintenance consistent with all requirements for public display.

(c) *Disposition for a special exception purpose.* (1) Upon receipt of an authorization request made under paragraph (b)(3)(i) of this section, or release notification under (a)(2), the Office Director may authorize the retention or transfer of custody of the marine mammal for a special exception purpose authorized under subpart D.

(2) The Office Director will first consider requests from a person authorized to hold the marine mammal for rehabilitation. The Office Director may authorize such person to retain or transfer custody of the marine mammal for scientific research, enhancement, or public display purposes.

(3) The Office Director may authorize retention or transfer of custody of the marine mammal only if:

- (i) Documentation has been submitted to the Office Director that the person retaining the subject animal or the person receiving custody of the subject animal by transfer, hereinafter referred to as the recipient, complies with public display requirements of 16 U.S.C. 1374(c)(2)(A) or, for purposes of scientific research and enhancement, holds an applicable permit, or an application for such a special exception permit under § 216.33 or a request for a major amendment under § 216.39 has been submitted to the Office Director and has been found complete;

(ii) The recipient agrees to hold the marine mammal in conformance with all applicable requirements and standards; and

(iii) The recipient acknowledges that the marine mammal is subject to seizure by the Office Director:

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(A) If, at any time pending issuance of the major amendment or permit, the Office Director determines that seizure is necessary in the interest of the health or welfare of the marine mammal;

(B) If the major amendment or permit is denied; or

(C) If the recipient is issued a notice of violation and assessment, or is subject to permit sanctions, in accordance with 15 CFR part 904.

(4) There shall be no remuneration associated with any transfer, provided that, the transferee may reimburse the transferor for any and all costs associated with the rehabilitation and transport of the marine mammal.

(5) Marine mammals undergoing rehabilitation or pending disposition under this section shall not be subject to public display, unless such activities are specifically authorized by the Regional Director or the Office Director, and conducted consistent with the requirements applicable to public display. Such marine mammals shall not be trained for performance or be included in any aspect of a program involving interaction with the public; and

(6) Marine mammals undergoing rehabilitation shall not be subject to intrusive research, unless such activities are specifically authorized by the Office Director in consultation with the Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals, and are conducted pursuant to a scientific research permit.

(d) Reporting. In addition to the report required under § 216.22(b), the person authorized to hold marine mammals for rehabilitation must submit reports to the Regional Director or Office Director regarding release or other disposition. These reports must be provided in the form and frequency specified by the Regional Director or Office Director.

[61 FR 21933, May 10, 1996]

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Subpart D—Special Exceptions

§ 216.30 [Reserved]

§ 216.31 Definitions.

For the purpose of this subpart, the definitions set forth in 50 CFR part 217 shall apply to all threatened and endangered marine mammals, unless a more restrictive definition exists under the MMPA or part 216.

[61 FR 21935, May 10, 1996]

§ 216.32 Scope.

The regulations of this subpart apply to:

(a) All marine mammals and marine mammal parts taken or born in captivity after December 20, 1972; and

(b) All marine mammals and marine mammal parts that are listed as threatened or endangered under the ESA.

[61 FR 21935, May 10, 1996]

§ 216.33 Permit application submission, review, and decision procedures.

(a) *Application submission.* Persons seeking a special exemption permit under this subpart must submit an application to the Office Director. The application must be signed by the applicant, and provide in a properly formatted manner all information necessary to process the application. Written instructions addressing information requirements and formatting may be obtained from the Office Director upon request.

(b) *Applications to export living marine mammals.* For applicants seeking a special exception permit to export living marine mammals, the application must:

(1) Be submitted through the Convention on International Trade in Endangered Fauna and Flora management authority of the foreign government or, if different, the appropriate agency or agencies of the foreign government that exercises oversight over marine mammals.

(2) Include a certification from the foreign government that:

(i) The information set forth in the application is accurate;

(ii) The laws and regulations of the foreign government involved allow enforcement of the terms and conditions of the permit, and that the foreign government will enforce all terms and conditions; and

(iii) The foreign government involved will afford comity to any permit amendment, modification, suspension or revocation decision.

(c) *Initial review.* (1) NMFS will notify the applicant of receipt of the application.

(2) During the initial review, the Office Director will determine:

(i) Whether the application is complete.

(ii) Whether the proposed activity is for purposes authorized under this subpart.

(iii) If the proposed activity is for enhancement purposes, whether the species or stock identified in the application is in need of enhancement for its survival or recovery and whether the proposed activity will likely succeed in its objectives.

(iv) Whether the activities proposed are to be conducted consistent with the permit restrictions and permit specific conditions as described in § 216.35 and § 216.36(a).

(v) Whether sufficient information is included regarding the environmental impact of the proposed activity to enable the Office Director:

(A) To make an initial determination under the National Environmental Policy Act (NEPA) as to whether the proposed activity is categorically excluded from preparation of further environmental documentation, or whether the preparation of an environmental assessment (EA) or environmental impact statement (EIS) is appropriate or necessary; and

(B) To prepare an EA or EIS if an initial determination is made by the Office Director that the activity proposed is not categorically excluded from such requirements.

(3) The Office Director may consult with the Marine Mammal Commission (Commission) and its Committee of Scientific Advisors on Marine Mam-

mals (Committee) in making these initial, and any subsequent, determinations.

(4) Incomplete applications will be returned with explanation. If the applicant fails to resubmit a complete application or correct the identified deficiencies within 60 days, the application will be deemed withdrawn. Applications that propose activities inconsistent with this subpart will be returned with explanation, and will not be considered further.

(d) *Notice of receipt and application review.* (1) Upon receipt of a valid, complete application, and the preparation of any NEPA documentation that has been determined initially to be required, the Office Director will publish a notice of receipt in the FEDERAL REGISTER. The notice will:

(i) Summarize the application, including:

(A) The purpose of the request;

(B) The species and number of marine mammals;

(C) The type and manner of special exception activity proposed;

(D) The location(s) in which the marine mammals will be taken, from which they will be imported, or to which they will be exported; and

(E) The requested period of the permit.

(ii) List where the application is available for review.

(iii) Invite interested parties to submit written comments concerning the application within 30 days of the date of the notice.

(iv) Include a NEPA statement that an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an EA or EIS, that an EA was prepared resulting in a finding of no significant impact, or that a final EIS has been prepared and is available for review.

(2) The Office Director will forward a copy of the complete application to the Commission for comment. If no comments are received within 45 days (or such longer time as the Office Director may establish) the Office Director will consider the Commission to have no objection to issuing a permit.

(3) The Office Director may consult with any other person, institution, or agency concerning the application.

(4) Within 30 days of publication of the notice of receipt in the FEDERAL REGISTER, any interested party may submit written comments or may request a public hearing on the application.

(5) If the Office Director deems it advisable, the Office Director may hold a public hearing within 60 days of publication of the notice of receipt in the FEDERAL REGISTER. Notice of the date, time, and place of the public hearing will be published in the FEDERAL REGISTER not less than 15 days in advance of the public hearing. Any interested person may appear in person or through representatives and may submit any relevant material, data, views, or comments. A summary record of the hearing will be kept.

(6) The Office Director may extend the period during which any interested party may submit written comments. Notice of the extension must be published in the FEDERAL REGISTER within 60 days of publication of the notice of receipt in the FEDERAL REGISTER.

(7) If, after publishing a notice of receipt, the Office Director determines on the basis of new information that an EA or EIS must be prepared, the Office Director must deny the permit unless an EA is prepared with a finding of no significant impact. If a permit is denied under these circumstances the application may be resubmitted with information sufficient to prepare an EA or EIS, and will be processed as a new application.

(e) *Issuance or denial procedures.* (1) Within 30 days of the close of the public hearing or, if no public hearing is held, within 30 days of the close of the public comment period, the Office Director will issue or deny a special exception permit.

(2) The decision to issue or deny a permit will be based upon:

(i) All relevant issuance criteria set forth at §216.34;

(ii) All purpose-specific issuance criteria as appropriate set forth at §216.41, §216.42, and §216.43;

(iii) All comments received or views solicited on the permit application; and

(iv) Any other information or data that the Office Director deems relevant.

(3) If the permit is issued, upon receipt, the holder must date and sign the permit, and return a copy of the original to the Office Director. The permit shall be effective upon the permit holder's signing of the permit. In signing the permit, the holder:

(i) Agrees to abide by all terms and conditions set forth in the permit, and all restrictions and relevant regulations under this subpart; and

(ii) Acknowledges that the authority to conduct certain activities specified in the permit is conditional and subject to authorization by the Office Director.

(4) Notice of the decision of the Office Director shall be published in the FEDERAL REGISTER within 10 days after the date of permit issuance or denial and shall indicate where copies of the permit, if issued, may be reviewed or obtained. If the permit issued involves marine mammals listed as endangered or threatened under the ESA, the notice shall include a finding by the Office Director that the permit:

(i) Was applied for in good faith;

(ii) If exercised, will not operate to the disadvantage of such endangered or threatened species; and

(iii) Is consistent with the purposes and policy set forth in section 2 of the ESA.

(5) If the permit is denied, the Office Director shall provide the applicant with an explanation for the denial.

(6) Under the MMPA, the Office Director may issue a permit for scientific research before the end of the public comment period if delaying issuance could result in injury to a species, stock, or individual, or in loss of unique research opportunities. The Office Director also may waive the 30-day comment period required under the ESA in an emergency situation where the health or life of an endangered or threatened marine mammal is threatened and no reasonable alternative is available. If a permit is issued under these circumstances, notice of such issuance before the end of the comment period shall be published in the FEDERAL REGISTER within 10 days of issuance.

(7) The applicant or any party opposed to a permit may seek judicial review of the terms and conditions of such permit or of a decision to deny such permit. Review may be obtained by filing a petition for review with the appropriate U.S. District Court as provided for by law.

[61 FR 21935, May 10, 1996]

§ 216.34 Issuance criteria.

(a) For the Office Director to issue any permit under this subpart, the applicant must demonstrate that:

(1) The proposed activity is humane and does not present any unnecessary risks to the health and welfare of marine mammals;

(2) The proposed activity is consistent with all restrictions set forth at § 216.35 and any purpose-specific restrictions as appropriate set forth at § 216.41, § 216.42, and § 216.43;

(3) The proposed activity, if it involves endangered or threatened marine mammals, will be conducted consistent with the purposes and policies set forth in section 2 of the ESA;

(4) The proposed activity by itself or in combination with other activities, will not likely have a significant adverse impact on the species or stock;

(5) Whether the applicant's expertise, facilities, and resources are adequate to accomplish successfully the objectives and activities stated in the application;

(6) If a live animal will be held captive or transported, the applicant's qualifications, facilities, and resources are adequate for the proper care and maintenance of the marine mammal; and

(7) Any requested import or export will not likely result in the taking of marine mammals or marine mammal parts beyond those authorized by the permit.

(b) The opinions or views of scientists or other persons or organizations knowledgeable of the marine mammals that are the subject of the application or of other matters germane to the application will be considered.

[61 FR 21936, May 10, 1996]

§ 216.35 Permit restrictions.

The following restrictions shall apply to all permits issued under this subpart:

(a) The taking, importation, export, or other permitted activity involving marine mammals and marine mammal parts shall comply with the regulations of this subpart.

(b) The maximum period of any special exception permit issued, or any major amendment granted, is five years from the effective date of the permit or major amendment. In accordance with the provisions of § 216.39, the period of a permit may be extended by a minor amendment up to 12 months beyond that established in the original permit.

(c) Except as provided for in § 216.41(c)(1)(v), marine mammals or marine mammal parts imported under the authority of a permit must be taken or imported in a humane manner, and in compliance with the Acts and any applicable foreign law. Importation of marine mammals and marine mammal parts is subject to the provisions of 50 CFR part 14.

(d) The permit holder shall not take from the wild any marine mammal which at the time of taking is either unweaned or less than eight months old, or is a part of a mother-calf/pup pair, unless such take is specifically authorized in the conditions of the special exception permit. Additionally, the permit holder shall not import any marine mammal that is pregnant or lactating at the time of taking or import, or is unweaned or less than eight months old unless such import is specifically authorized in the conditions of the special exception permit.

(e) Captive marine mammals shall not be released into the wild unless specifically authorized by the Office Director under a scientific research or enhancement permit.

(f) The permit holder is responsible for all activities of any individual who is operating under the authority of the permit;

(g) Individuals conducting activities authorized under the permit must possess qualifications commensurate with their duties and responsibilities, or must be under the direct supervision of a person with such qualifications;

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(h) Persons who require state or Federal licenses to conduct activities authorized under the permit must be duly licensed when undertaking such activities;

(i) Special exception permits are not transferable or assignable to any other person, and a permit holder may not require any direct or indirect compensation from another person in return for requesting authorization for such person to conduct the taking, import, or export activities authorized under the subject permit;

(j) The permit holder or designated agent shall possess a copy of the permit when engaged in a permitted activity, when the marine mammal is in transit incidental to such activity, and whenever marine mammals or marine mammal parts are in the possession of the permit holder or agent. A copy of the permit shall be affixed to any container, package, enclosure, or other means of containment, in which the marine mammals or marine mammal parts are placed for purposes of transit, supervision, or care. For marine mammals held captive and marine mammal parts in storage, a copy of the permit shall be kept on file in the holding or storage facility.

[61 FR 21936, May 10, 1996]

§ 216.36 Permit conditions.

(a) *Specific conditions.* (1) Permits issued under this subpart shall contain specific terms and conditions deemed appropriate by the Office Director, including, but not limited to:

(i) The number and species of marine mammals that are authorized to be taken, imported, exported, or otherwise affected;

(ii) The manner in which marine mammals may be taken according to type of take;

(iii) The location(s) in which the marine mammals may be taken, from which they may be imported, or to which they may be exported, as applicable, and, for endangered or threatened marine mammal species to be imported or exported, the port of entry or export;

(iv) The period during which the permit is valid.

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(b) *Other conditions.* In addition to the specific conditions imposed pursuant to paragraph (a) of this section, the Office Director shall specify any other permit conditions deemed appropriate.

[61 FR 21937, May 10, 1996]

§ 216.37 Marine mammal parts.

With respect to marine mammal parts acquired by take or import authorized under a permit issued under this subpart:

(a) Marine mammal parts are transferrable if:

(1) The person transferring the part receives no remuneration of any kind for the marine mammal part;

(2) The person receiving the marine mammal part is:

(i) An employee of NMFS, the U.S. Fish and Wildlife Service, or any other governmental agency with conservation and management responsibilities, who receives the part in the course of their official duties;

(ii) A holder of a special exception permit which authorizes the take, import, or other activity involving the possession of a marine mammal part of the same species as the subject part; or

(iii) In the case of marine mammal parts from a species that is not depleted, endangered or threatened, a person who is authorized under section 112(c) of the MMPA and subpart C of this part to take or import marine mammals or marine mammal parts;

(iv) Any other person specifically authorized by the Regional Director, consistent with the requirements of paragraphs (a)(1) and (a)(3) through (6) of this section.

(3) The marine mammal part is transferred for the purpose of scientific research, maintenance in a properly curated, professionally accredited scientific collection, or education, provided that, for transfers for educational purposes, the recipient is a museum, educational institution or equivalent that will ensure that the part is available to the public as part of an educational program;

(4) A unique number assigned by the permit holder is marked on or affixed to the marine mammal part or container;

(5) The person receiving the marine mammal part agrees that, as a condition of receipt, subsequent transfers may only occur subject to the provisions of paragraph (a) of this section; and

(6) Within 30 days after the transfer, the person transferring the marine mammal part notifies the Regional Director of the transfer, including a description of the part, the person to whom the part was transferred, the purpose of the transfer, certification that the recipient has agreed to comply with the requirements of paragraph (a) of this section for subsequent transfers, and, if applicable, the recipient's permit number.

(b) Marine mammal parts may be loaned to another person for a purpose described in paragraph (a)(3) of this section and without the agreement and notification required under paragraphs (a)(5) and (6) of this section, if:

(1) A record of the loan is maintained; and

(2) The loan is for not more than one year. Loans for a period greater than 12 months, including loan extensions or renewals, require notification of the Regional Director under paragraph (a)(6).

(c) Unless other disposition is specified in the permit, a holder of a special exception permit may retain marine mammal parts not destroyed or otherwise disposed of during or after a scientific research or enhancement activity, if such marine mammal parts are:

(1) Maintained as part of a properly curated, professionally accredited collection; or

(2) Made available for purposes of scientific research or enhancement at the request of the Office Director.

(d) Marine mammal parts may be exported and subsequently reimported by a permit holder or subsequent authorized recipient, for the purpose of scientific research, maintenance in a properly curated, professionally accredited scientific collection, or education, provided that:

(1) The permit holder or other person receives no remuneration for the marine mammal part;

(2) A unique number assigned by the permit holder is marked on or affixed

to the marine mammal specimen or container;

(3) The marine mammal part is exported or reimported in compliance with all applicable domestic and foreign laws;

(4) If exported or reimported for educational purposes, the recipient is a museum, educational institution, or equivalent that will ensure that the part is available to the public as part of an educational program; and

(5) Special reports are submitted within 30 days after both export and reimport as required by the Office Director under § 216.38.

[61 FR 21937, May 10, 1996]

§ 216.38 Reporting.

All permit holders must submit annual, final, and special reports in accordance with the requirements established in the permit, and any reporting format established by the Office Director.

[61 FR 21937, May 10, 1996]

§ 216.39 Permit amendments.

(a) *General.* Special exception permits may be amended by the Office Director. Major and minor amendments may be made to permits in response to, or independent of, a request from the permit holder. Amendments must be consistent with the Acts and comply with the applicable provisions of this subpart.

(1) A *major amendment* means any change to the permit specific conditions under § 216.36(a) regarding:

(i) The number and species of marine mammals that are authorized to be taken, imported, exported, or otherwise affected;

(ii) The manner in which these marine mammals may be taken, imported, exported, or otherwise affected, if the proposed change may result in an increased level of take or risk of adverse impact;

(iii) The location(s) in which the marine mammals may be taken, from which they may be imported, and to which they may be exported, as applicable; and

(iv) The duration of the permit, if the proposed extension would extend the duration of the permit more than 12

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months beyond that established in the original permit.

(2) A *minor amendment* means any amendment that does not constitute a major amendment.

(b) *Amendment requests and proposals.*

(1) Requests by a permit holder for an amendment must be submitted in writing and include the following:

(i) The purpose and nature of the amendment;

(ii) Information, not previously submitted as part of the permit application or subsequent reports, necessary to determine whether the amendment satisfies all issuance criteria set forth at § 216.34, and, as appropriate, § 216.41, § 216.42, and § 216.43.

(iii) Any additional information required by the Office Director for purposes of reviewing the proposed amendment.

(2) If an amendment is proposed by the Office Director, the permit holder will be notified of the proposed amendment, together with an explanation.

(c) *Review of proposed amendments.* (1) *Major amendments.* The provisions of § 216.33(d) and (e) governing notice of receipt, review and decision shall apply to all proposed major amendments.

(2) *Minor amendments.* (i) After reviewing all appropriate information, the Office Director will provide the permit holder with written notice of the decision on a proposed or requested amendment, together with an explanation for the decision.

(ii) If the minor amendment extends the duration of the permit 12 months or less from that established in the original permit, notice of the minor amendment will be published in the FEDERAL REGISTER within 10 days from the date of the Office Director's decision.

(iii) A minor amendment will be effective upon a final decision by the Office Director.

[61 FR 21937, May 10, 1996]

§ 216.40 Penalties and permit sanctions.

(a) Any person who violates any provision of this subpart or permit issued thereunder is subject to civil and criminal penalties, permit sanctions and forfeiture as authorized under the Acts, and 15 CFR part 904.

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(b) All special exception permits are subject to suspension, revocation, modification and denial in accordance with the provisions of subpart D of 15 CFR part 904.

[61 FR 21938, May 10, 1996]

§ 216.41 Permits for scientific research and enhancement.

In addition to the requirements under §§ 216.33 through 216.38, permits for scientific research and enhancement are governed by the following requirements:

(a) *Applicant.* (1) For each application submitted under this section, the applicant shall be the principal investigator responsible for the overall research or enhancement activity. If the research or enhancement activity will involve a periodic change in the principal investigator or is otherwise controlled by and dependent upon another entity, the applicant may be the institution, governmental entity, or corporation responsible for supervision of the principal investigator.

(2) For any scientific research involving captive maintenance, the application must include supporting documentation from the person responsible for the facility or other temporary enclosure.

(b) *Issuance Criteria.* For the Office Director to issue any scientific research or enhancement permit, the applicant must demonstrate that:

(1) The proposed activity furthers a bona fide scientific or enhancement purpose;

(2) If the lethal taking of marine mammals is proposed:

(i) Non-lethal methods for conducting the research are not feasible; and

(ii) For depleted, endangered, or threatened species, the results will directly benefit that species or stock, or will fulfill a critically important research need.

(3) Any permanent removal of a marine mammal from the wild is consistent with any applicable quota established by the Office Director.

(4) The proposed research will not likely have significant adverse effects on any other component of the marine ecosystem of which the affected species or stock is a part.

(5) For species or stocks designated or proposed to be designated as depleted, or listed or proposed to be listed as endangered or threatened:

(i) The proposed research cannot be accomplished using a species or stock that is not designated or proposed to be designated as depleted, or listed or proposed to be listed as threatened or endangered;

(ii) The proposed research, by itself or in combination with other activities will not likely have a long-term direct or indirect adverse impact on the species or stock;

(iii) The proposed research will either:

(A) Contribute to fulfilling a research need or objective identified in a species recovery or conservation plan, or if there is no conservation or recovery plan in place, a research need or objective identified by the Office Director in stock assessments established under section 117 of the MMPA;

(B) Contribute significantly to understanding the basic biology or ecology of the species or stock, or to identifying, evaluating, or resolving conservation problems for the species or stock; or

(C) Contribute significantly to fulfilling a critically important research need.

(6) For proposed enhancement activities:

(i) Only living marine mammals and marine mammal parts necessary for enhancement of the survival, recovery, or propagation of the affected species or stock may be taken, imported, exported, or otherwise affected under the authority of an enhancement permit. Marine mammal parts would include in this regard clinical specimens or other biological samples required for the conduct of breeding programs or the diagnosis or treatment of disease.

(ii) The activity will likely contribute significantly to maintaining or increasing distribution or abundance, enhancing the health or welfare of the species or stock, or ensuring the survival or recovery of the affected species or stock in the wild.

(iii) The activity is consistent with:

(A) An approved conservation plan developed under section 115(b) of the MMPA or recovery plan developed

under section 4(f) of the ESA for the species or stock; or

(B) If there is no conservation or recovery plan, with the Office Director's evaluation of the actions required to enhance the survival or recovery of the species or stock in light of the factors that would be addressed in a conservation or recovery plan.

(iv) An enhancement permit may authorize the captive maintenance of a marine mammal from a threatened, endangered, or depleted species or stock only if the Office Director determines that:

(A) The proposed captive maintenance will likely contribute directly to the survival or recovery of the species or stock by maintaining a viable gene pool, increasing productivity, providing necessary biological information, or establishing animal reserves required to support directly these objectives; and

(B) The expected benefit to the species or stock outweighs the expected benefits of alternatives that do not require removal of marine mammals from the wild.

(v) The Office Director may authorize the public display of marine mammals held under the authority of an enhancement permit only if:

(A) The public display is incidental to the authorized captive maintenance;

(B) The public display will not interfere with the attainment of the survival or recovery objectives;

(C) The marine mammals will be held consistent with all requirements and standards that are applicable to marine mammals held under the authority of the Acts and the Animal Welfare Act, unless the Office Director determines that an exception is necessary to implement an essential enhancement activity; and

(D) The marine mammals will be excluded from any interactive program and will not be trained for performance.

(vi) The Office Director may authorize non-intrusive scientific research to be conducted while a marine mammal is held under the authority of an enhancement permit, only if such scientific research:

(A) Is incidental to the permitted enhancement activities; and

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(B) Will not interfere with the attainment of the survival or recovery objectives.

(c) *Restrictions.* (1) The following restrictions apply to all scientific research permits issued under this subpart:

(i) Research activities must be conducted in the manner authorized in the permit.

(ii) Research results shall be published or otherwise made available to the scientific community in a reasonable period of time.

(iii) Research activities must be conducted under the direct supervision of the principal investigator or a co-investigator identified in the permit.

(iv) Personnel involved in research activities shall be reasonable in number and limited to:

(A) Individuals who perform a function directly supportive of and necessary to the permitted research activity; and

(B) Support personnel included for the purpose of training or as backup personnel for persons described in paragraph (c)(1)(iv)(A).

(v) Any marine mammal part imported under the authority of a scientific research permit must not have been obtained as the result of a lethal taking that would be inconsistent with the Acts, unless authorized by the Office Director.

(vi) Marine mammals held under a permit for scientific research shall not be placed on public display, included in an interactive program or activity, or trained for performance unless such activities:

(A) Are necessary to address scientific research objectives and have been specifically authorized by the Office Director under the scientific research permit; and

(B) Are conducted incidental to and do not in any way interfere with the permitted scientific research; and

(C) Are conducted in a manner consistent with provisions applicable to public display, unless exceptions are specifically authorized by the Office Director.

(vii) Any activity conducted incidental to the authorized scientific research activity must not involve any taking of marine mammals beyond

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what is necessary to conduct the research (i.e., educational and commercial photography).

(2) Any marine mammal or progeny held in captive maintenance under an enhancement permit shall be returned to its natural habitat as soon as feasible, consistent with the terms of the enhancement permit and the objectives of an approved conservation or recovery plan. In accordance with section 10(j) of the ESA, the Office Director may authorize the release of any population of an endangered or threatened species outside the current range of such species if the Office Director determines that such release will further the conservation of such species.

[61 FR 21938, May 10, 1996]

§ 216.42 Photography. [Reserved]

§ 216.43 Public display. [Reserved]

§ 216.44 Applicability/transition.

(a) *General.* The regulations of this subpart are applicable to all persons, including persons holding permits or other authorizing documents issued before June 10, 1996, by NMFS for the take, import, export, or conduct of any otherwise prohibited activity involving a marine mammal or marine mammal part for special exception purposes.

(b) *Scientific research.* Any intrusive research as defined in § 216.3, initiated after June 10, 1996, must be authorized under a scientific research permit. Intrusive research authorized by the Office Director to be conducted on captive marine mammals held for public display purposes prior to June 10, 1996, must be authorized under a scientific research permit one year after June 10, 1996.

[61 FR 21939, May 10, 1996]

§ 216.45 General Authorization for Level B harassment for scientific research.

(a) *General Authorization.* (1) Persons are authorized under section 104(c)(3)(C) of the MMPA to take marine mammals in the wild by Level B harassment, as defined in § 216.3, for purposes of bona fide scientific research *Provided, That:*

(i) They submit a letter of intent in accordance with the requirements of

paragraph (b) of this section, receive confirmation that the General Authorization applies in accordance with paragraph (c) of this section, and comply with the terms and conditions of paragraph (d) of this section; or

(ii) If such marine mammals are listed as endangered or threatened under the ESA, they have been issued a permit under Section 10(a)(1)(A) of the ESA and implementing regulations at 50 CFR parts 217–227, particularly at § 222.23 through § 222.28, to take marine mammals in the wild for the purpose of scientific research, the taking authorized under the permit involves such Level B harassment of marine mammals or marine mammal stocks, and they comply with the terms and conditions of that permit.

(2) Except as provided under paragraph (a)(1)(ii) of this section, no taking, including harassment, of marine mammals listed as threatened or endangered under the ESA is authorized under the General Authorization. Marine mammals listed as endangered or threatened under the ESA may be taken for purposes of scientific research only after issuance of a permit for such activities pursuant to the ESA.

(3) The following types of research activities will likely qualify for inclusion under the General Authorization: Photo-identification studies, behavioral observations, and vessel and aerial population surveys (except aerial surveys over pinniped rookeries at altitudes of less than 1,000 ft).

(b) *Letter of intent.* Except as provided under paragraph (a)(1)(ii) of this section, any person intending to take marine mammals in the wild by Level B harassment for purposes of bona fide scientific research under the General Authorization must submit, at least 60 days before commencement of such research, a letter of intent by certified return/receipt mail to the Chief, Permits Division, F/PR1, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910–3226.

(1) The letter of intent must be submitted by the principal investigator (who shall be deemed the applicant). For purposes of this section, the principal investigator is the individual who

is responsible for the overall research project, or the institution, governmental entity, or corporation responsible for supervision of the principal investigator.

(2) The letter of intent must include the following information:

(i) The name, address, telephone number, qualifications and experience of the applicant and any co-investigator(s) to be conducting the proposed research, and a curriculum vitae for each, including a list of publications by each such investigator relevant to the objectives, methodology, or other aspects of the proposed research;

(ii) The species or stocks of marine mammals (common and scientific names) that are the subject of the scientific research and any other species or stock of marine mammals that may be harassed during the conduct of the research;

(iii) The geographic location(s) in which the research is to be conducted, e.g., geographic name or lat./long.;

(iv) The period(s) of time over which the research will be conducted (up to five years), including the field season(s) for the research, if applicable;

(v) The purpose of the research, including a description of how the proposed research qualifies as bona fide research as defined in § 216.3; and

(vi) The methods to be used to conduct the research.

(3) The letter of intent must be signed, dated, and certified by the applicant as follows:

In accordance with section 104(c)(3)(C) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and implementing regulations (50 CFR part 216), I hereby notify the National Marine Fisheries Service of my intent to conduct research involving only Level B harassment on marine mammals in the wild, and request confirmation that the General Authorization for Level B Harassment for Scientific Research applies to the proposed research as described herein. I certify that the information in this letter of intent is complete, true, and correct to the best of my knowledge and belief, and I understand that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or penalties under the MMPA and implementing regulations. I acknowledge and accept that authority to conduct scientific research on marine mammals in the wild under the General Authorization is a limited conditional authority restricted to

Level B harassment only, and that any other take of marine mammals, including the conduct of any activity that has the potential to injure marine mammals (i.e., Level A harassment), may subject me to penalties under the MMPA and implementing regulations.

(c) *Confirmation that the General Authorization applies or notification of permit requirement.*

(1) Not later than 30 days after receipt of a letter of intent as described in paragraph (b) of this section, the Chief, Permits Division, NMFS will issue a letter to the applicant either:

(i) Confirming that the General Authorization applies to the proposed scientific research as described in the letter of intent;

(ii) Notifying the applicant that all or part of the research described in the letter of intent is likely to result in a taking of a marine mammal in the wild involving other than Level B harassment and, as a result, cannot be conducted under the General Authorization, and that a scientific research permit is required to conduct all or part of the subject research; or

(iii) Notifying the applicant that the letter of intent fails to provide sufficient information and providing a description of the deficiencies, or notifying the applicant that the proposed research as described in the letter of intent is not bona fide research as defined in §216.3.

(2) A copy of each letter of intent and letter confirming that the General Authorization applies or notifying the applicant that it does not apply will be forwarded to the Marine Mammal Commission.

(3) Periodically, NMFS will publish a summary document in the FEDERAL REGISTER notifying the public of letters of confirmation issued.

(d) *Terms and conditions.* Persons issued letters of confirmation in accordance with paragraph (c) of this section are responsible for complying with the following terms and conditions:

(1) Activities are limited to those conducted for the purposes, by the means, in the locations, and during the periods of time described in the letter of intent and acknowledged as authorized under the General Authorization in the confirmation letter sent pursuant to paragraph (c) of this section;

(2) Annual reports of activities conducted under the General Authorization must be submitted to the Chief, Permits Division (address listed in paragraph (b) of this section) within 90 days of completion of the last field season(s) during the calendar year or, if the research is not conducted during a defined field season, no later than 90 days after the anniversary date of the letter of confirmation issued under paragraph (c) of this section. Annual reports must include:

(i) A summary of research activities conducted;

(ii) Identification of the species and number of each species taken by Level B harassment;

(iii) An evaluation of the progress made in meeting the objectives of the research as described in the letter of intent; and

(iv) Any incidental scientific, educational, or commercial uses of photographs, videotape, and film obtained as a result of or incidental to the research and if so, names of all photographers.

(3) Authorization to conduct research under the General Authorization is for the period(s) of time identified in the letter of intent or for a period of 5 years from the date of the letter of confirmation issued under paragraph (c) of this section, whichever is less, unless extended by the Director or modified, suspended, or revoked in accordance with paragraph (e) of this section;

(4) Activities conducted under the General Authorization may only be conducted under the on-site supervision of the principal investigator or co-investigator(s) named in the letter of intent. All personnel involved in the conduct of activities under the General Authorization must perform a function directly supportive of and necessary for the research being conducted, or be one of a reasonable number of support personnel included for the purpose of training or as back-up personnel;

(5) The principal investigator must notify the appropriate Regional Director, NMFS, (Regional Director) in writing at least 2 weeks before initiation of on-site activities. The Regional Director shall consider this information in efforts to coordinate field research activities to minimize adverse impacts

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on marine mammals in the wild. The principal investigator must cooperate with coordination efforts by the Regional Director in this regard;

(6) If research activities result in a taking which exceeds Level B harassment, the applicant shall:

(i) Report the taking within 12 hours to the Director, Office of Protected Resources, or his designee as set forth in the letter authorizing research; and

(ii) Temporarily discontinue for 72 hours all field research activities that resulted in the taking. During this time period, the applicant shall consult with NMFS as to the circumstances surrounding the taking and any precautions necessary to prevent future taking, and may agree to amend the research protocol, as deemed necessary by NMFS.

(7) NMFS may review scientific research conducted pursuant to the General Authorization. If requested by NMFS, the applicant must cooperate with any such review and shall:

(i) Allow any employee of NOAA or any other person designated by the Director, Office of Protected Resources to observe research activities; and

(ii) Provide any documents or other information relating to the scientific research;

(8) Any photographs, videotape, or film obtained during the conduct of research under the General Authorization must be identified by a statement that refers to the General Authorization or ESA permit number, and includes the file number provided by NMFS in the confirmation letter, the name of the photographer, and the date the image was taken. This statement must accompany the image(s) in all subsequent uses or sales. The annual report must note incidental scientific, educational, or commercial uses of the images, and if there are any such uses, the names of all photographers; and

(9) Persons conducting scientific research under authority of the General Authorization may not transfer or assign any authority granted thereunder to any other person.

(e) *Suspension, revocation, or modification.* (1) NMFS may suspend, revoke, or modify the authority to conduct scientific research under the General Authorization if:

(i) The letter of intent included false information or statements of a material nature;

(ii) The research does not constitute bona fide scientific research;

(iii) Research activities result in takings of marine mammals other than by Level B harassment;

(iv) Research activities differ from those described in the letter of intent submitted by the applicant and letter of confirmation issued by NMFS; or

(v) The applicant violates any term or condition set forth in this section.

(2) Any suspension, revocation, or modification is subject to the requirements of 15 CFR part 904.

[59 FR 50376, Oct. 3, 1994]

§ 216.46 U.S. citizens on foreign flag vessels operating under the International Dolphin Conservation Program.

The MMPA's provisions do not apply to a citizen of the United States who incidentally takes any marine mammal during fishing operations in the ETP which are outside the U.S. exclusive economic zone (as defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)), while employed on a fishing vessel of a harvesting nation that is participating in, and in compliance with, the IDCP.

[65 FR 56, Jan. 3, 2000]

§§ 216.47–216.49 [Reserved]

Subpart E—Designated Ports

§ 216.50 Importation at designated ports.

(a) Any marine mammal or marine mammal product which is subject to the jurisdiction of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce and is intended for importation into the United States shall be subject to the provisions of 50 CFR part 14.

(b) For the information of importers, designated ports of entry for the United States are:

New York, N.Y.
Miami, Fla.
Chicago, Ill.
San Francisco, Calif.

other natural resources beyond the level otherwise agreed upon for the species covered by the conservation plan without the consent of the permittee.

(ii) If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, NMFS may require additional measures of the permittee where the conservation plan is being properly implemented. However, such additional measures are limited to modifications within any conserved habitat areas or to the conservation plan's operating conservation program for the affected species. The original terms of the conservation plan will be maintained to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the conservation plan without the consent of the permittee.

(iii) NMFS has the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. NMFS will consider, but not be limited to, the following factors:

- (A) Size of the current range of the affected species;
- (B) Percentage of range adversely affected by the conservation plan;
- (C) Percentage of range conserved by the conservation plan;
- (D) Ecological significance of that portion of the range affected by the conservation plan;
- (E) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the conservation plan; and
- (F) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

(h) Nothing in this rule will be construed to limit or constrain the Assistant Administrator, any Federal, State,

local, or Tribal government agency, or a private entity, from taking additional actions at his or her own expense to protect or conserve a species included in a conservation plan.

§ 222.308 Permits for scientific purposes or for the enhancement of propagation or survival of species.

(a) *Scope.* The Assistant Administrator may issue permits for scientific purposes or for the enhancement of the propagation or survival of the affected endangered or threatened species in accordance with the regulations in parts 222, 223, and 224 of this chapter and under such terms and conditions as the Assistant Administrator may prescribe, authorizing the taking, importation, or other acts otherwise prohibited by section 9 of the Act. Within the jurisdiction of a State, more restrictive state laws or regulations in regard to endangered species shall prevail in regard to taking. Proof of compliance with applicable state laws will be required before a permit will be issued.

(b) *Application procedures.* Any person desiring to obtain such a permit may make application therefor to the Assistant Administrator. Permits for marine mammals shall be issued in accordance with the provisions of part 216, subpart D of this chapter. Permits relating to sea turtles may involve the Fish and Wildlife Service, in which case the applicant shall follow the procedures set out in § 222.309. The following information will be used as the basis for determining whether an application is complete and whether a permit for scientific purposes or for enhancement of propagation or survival of the affected species should be issued by the Assistant Administrator. An application for a permit shall provide the following information and such other information that the Assistant Administrator may require:

- (1) Title, as applicable, either—
 - (i) Application for permit for scientific purposes under the Act; or
 - (ii) Application for permit for the enhancement of the propagation or survival of the endangered species Under the Act.
- (2) The date of the application.
- (3) The identity of the applicant including complete name, address, and

telephone number. If the applicant is a partnership or a corporate entity, set forth the details. If the endangered species is to be utilized by a person other than the applicant, set forth the name of that person and such other information as would be required if such person were an applicant.

(4) A description of the purpose of the proposed acts, including the following:

(i) A detailed justification of the need for the endangered species, including a discussion of possible alternatives, whether or not under the control of the applicant; and

(ii) A detailed description of how the species will be used.

(5) A detailed description of the project, or program, in which the endangered species is to be used, including the following:

(i) The period of time over which the project or program will be conducted;

(ii) A list of the names and addresses of the sponsors or cooperating institutions and the scientists involved;

(iii) A copy of the formal research proposal or contract if one has been prepared;

(iv) A statement of whether the proposed project or program has broader significance than the individual researcher's goals. For example, does the proposed project or program respond directly or indirectly to recommendation of any national or international scientific body charged with research or management of the endangered species? If so, how?; and

(v) A description of the arrangements, if any, for the disposition of any dead specimen or its skeleton or other remains in a museum or other institutional collection for the continued benefit to science.

(6) A description of the endangered species which is the subject of the application, including the following:

(i) A list of each species and the number of each, including the common and scientific name, the subspecies (if applicable), population group, and range;

(ii) A physical description of each animal, including the age, size, and sex;

(iii) A list of the probable dates of capture or other taking, importation, exportation, and other acts which require a permit for each animal and the

location of capture or other taking, importation, exportation, and other acts which require a permit, as specifically as possible;

(iv) A description of the status of the stock of each species related insofar as possible to the location or area of taking;

(v) A description of the manner of taking for each animal, including the gear to be used;

(vi) The name and qualifications of the persons or entity which will capture or otherwise take the animals; and

(vii) If the capture or other taking is to be done by a contractor, a statement as to whether a qualified member of your staff (include name(s) and qualifications) will supervise or observe the capture or other taking. Accompanying such statement shall be a copy of the proposed contract or a letter from the contractor indicating agreement to capture or otherwise take the animals, should a permit be granted.

(7) A description of the manner of transportation for any live animal taken, imported, exported, or shipped in interstate commerce, including the following:

(i) Mode of transportation;

(ii) Name of transportation company;

(iii) Length of time in transit for the transfer of the animal(s) from the capture site to the holding facility;

(iv) Length of time in transit for any planned future move or transfer of the animals;

(v) The qualifications of the common carrier or agent used for transportation of the animals;

(vi) A description of the pen, tank, container, cage, cradle, or other devices used to hold the animal at both the capture site and during transportation;

(vii) Special care before and during transportation, such as salves, antibiotics, moisture; and

(viii) A statement as to whether the animals will be accompanied by a veterinarian or by another similarly qualified person, and the qualifications of such person.

(8) Describe the contemplated care and maintenance of any live animals

sought, including a complete description of the facilities where any such animals will be maintained including:

(i) The dimensions of the pools or other holding facilities and the number, sex, and age of animals by species to be held in each;

(ii) The water supply, amount, and quality;

(iii) The diet, amount and type, for all animals;

(iv) Sanitation practices used;

(v) Qualifications and experience of the staff;

(vi) A written certification from a licensed veterinarian or from a recognized expert who are knowledgeable on the species (or related species) or group covered in the application. The certificate shall verify that the veterinarian has personally reviewed the amendments for transporting and maintaining the animal(s) and that, in the veterinarian's opinion, they are adequate to provide for the well-being of the animal; and

(vii) The availability in the future of a consulting expert or veterinarian meeting paragraph requirements of (b)(8)(vi) in this section.

(9) A statement of willingness to participate in a cooperative breeding program and maintain or contribute data to a stud book.

(10) A statement of how the applicant's proposed project or program will enhance or benefit the wild population.

(11) For the 5 years preceding the date of application, the applicant shall provide a detailed description of all mortalities involving species under the control of or utilized by the applicant and are either presently listed as endangered species or are taxonomically related within the Order to the species which is the subject of this application, including:

(i) A list of all endangered species and related species that are the subject of this application that have been captured, transported, maintained, or utilized by the applicant for scientific purposes or for the enhancement of propagation or survival of the affected species, and/or of related species that are captured, transported, maintained, or utilized by the applicant for scientific purposes or for enhancement of

propagation or survival of the affected species;

(ii) The numbers of mortalities among such animals by species, by date, by location of capture, i.e., from which population, and the location of such mortalities;

(iii) The cause(s) of any such mortality; and

(iv) The steps which have been taken by applicant to avoid or decrease any such mortality.

(12) A certification in the following language: I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under the Endangered Species Act, as amended, and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties under the Act.

(13) The applicant and/or an officer thereof must sign the application.

(14) Assistance in completing this application may be obtained by writing Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 or calling the Office of Protected Resources at 301-713-1401. Allow at least 90 days for processing.

(c) *Issuance criteria.* In determining whether to issue a permit for scientific purposes or to enhance the propagation or survival of the affected endangered species, the Assistant Administrator shall specifically consider, among other application criteria, the following:

(1) Whether the permit was applied for in good faith;

(2) Whether the permit, if granted and exercised, will not operate to the disadvantage of the endangered species;

(3) Whether the permit would be consistent with the purposes and policy set forth in section 2 of the Act;

(4) Whether the permit would further a bona fide and necessary or desirable scientific purpose or enhance the propagation or survival of the endangered species, taking into account the benefits anticipated to be derived on behalf of the endangered species;

(5) The status of the population of the requested species and the effect of the proposed action on the population, both direct and indirect;

(6) If a live animal is to be taken, transported, or held in captivity, the applicant's qualifications for the proper care and maintenance of the species and the adequacy of the applicant's facilities;

(7) Whether alternative non-endangered species or population stocks can and should be used;

(8) Whether the animal was born in captivity or was (or will be) taken from the wild;

(9) Provision for disposition of the species if and when the applicant's project or program terminates;

(10) How the applicant's needs, program, and facilities compare and relate to proposed and ongoing projects and programs;

(11) Whether the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application; and

(12) Opinions or views of scientists or other persons or organizations knowledgeable about the species which is the subject of the application or of other matters germane to the application.

(d) *Terms and conditions.* Permits applied for under this section shall contain terms and conditions as the Assistant Administrator may deem appropriate, including but not limited to the following:

(1) The number and kind of species covered;

(2) The location and manner of taking;

(3) Port of entry or export;

(4) The methods of transportation, care, and maintenance to be used with live species;

(5) Any requirements for reports or rights of inspections with respect to any activities carried out pursuant to the permit;

(6) The transferability or assignability of the permit;

(7) The sale or other disposition of the species, its progeny, or the species product; and

(8) A reasonable fee covering the costs of issuance of such permit, including reasonable inspections and an

appropriate apportionment of overhead and administrative expenses of the Department of Commerce. All such fees will be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the service.

§ 222.309 Permits for listed species of sea turtles involving the Fish and Wildlife Service.

(a) This section establishes specific procedures for issuance of the following permits: scientific purposes or to enhance the propagation or survival of endangered or threatened species of sea turtles; zoological exhibition or educational purposes for threatened species of sea turtles; and permits that requires coordination with the Fish and Wildlife Service. The National Marine Fisheries Service maintains jurisdiction for such species in the marine environment. The Fish and Wildlife Service maintains jurisdiction for such species of sea turtles in the land environment.

(b) For permits relating to any activity in the marine environment exclusively, permit applicants and permittees must comply with the regulations in parts 222, 223, and 224 of this chapter.

(c) For permits relating to any activity in the land environment exclusively, permit applicants must submit applications to the Wildlife Permit Office (WPO) of the U.S. Fish and Wildlife Service in accordance with either 50 CFR 17.22(a), if the species is endangered, or 50 CFR 17.32(a), if the species is threatened.

(d) For permits relating to any activity in both the land and marine environments, applicants must submit applications to the WPO. WPO will forward the application to NMFS for review and processing of those activities under its jurisdiction. Based on this review and processing, WPO will issue either a permit or a letter of denial in accordance with its own regulations.

(e) For permits relating to any activity in a marine environment and that also requires a permit under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (TIAS 8249, July 1, 1975) (50 CFR part 23), applicants must submit applications to the WPO. WPO will

forward the application to NMFS for review and processing, after which WPO will issue a combination ESA/CITES permit or a letter of denial.

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

Subpart A—General Provisions

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223.102 Enumeration of threatened marine and anadromous species.

Subpart B—Restrictions Applicable to Threatened Marine and Anadromous Species

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223.203 Anadromous fish.

223.204 Exceptions to prohibitions relating to anadromous fish.

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FIGURE 14a TO PART 223—MAXIMUM ANGLE OF DEFLECTOR BARS WITH STRAIGHT BARS ATTACHED TO THE BOTTOM OF THE FRAME

FIGURE 14b TO PART 223—MAXIMUM ANGLE OF DEFLECTOR BARS WITH BENT BARS ATTACHED TO THE BOTTOM OF THE FRAME

FIGURE 15 TO PART 223—MAXIMUM ANGLE OF DEFLECTOR BARS WITH BARS UNATTACHED TO THE BOTTOM OF THE FRAME

FIGURE 16 TO PART 223—ESCAPE OPENING AND FLAP DIMENSIONS FOR THE DOUBLE COVER FLAP TED

AUTHORITY: 16 U.S.C. 1531 *et seq.*; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq.*

SOURCE: 43 FR 32809, July 28, 1978, unless otherwise noted. Redesignated at 64 FR 14068, Mar. 23, 1999.

Subpart A—General Provisions

§ 223.101 Purpose and scope.

(a) The regulations contained in this part identify the species under the jurisdiction of the Secretary of Commerce that have been determined to be threatened species pursuant to section 4(a) of the Act, and provide for the conservation of such species by establishing rules and procedures to governing activities involving the species.

(b) The regulations contained in this part apply only to the threatened species enumerated in § 223.102.

(c) The provisions of this part are in addition to, and not in lieu of, other regulations of parts 222 through 226 of this chapter which prescribe additional restrictions or conditions governing threatened species.

[64 FR 14068, Mar. 23, 1999]

§ 223.102 Enumeration of threatened marine and anadromous species.

The species determined by the Secretary of Commerce to be threatened pursuant to section 4(a) of the Act, as well as species listed under the Endangered Species Conservation Act of 1969 by the Secretary of the Interior and currently under the jurisdiction of the Secretary of Commerce, are the following:

(a) *Marine and anadromous fish.* (1) Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*). Includes all natural population(s) of spring/summer chinook salmon in the mainstem Snake River and any of the following subbasins: Tucannon River, Grande Ronde River, Imnaha River, and Salmon River.

(2) Snake River fall chinook salmon (*Oncorhynchus tshawytscha*). Includes all natural population(s) of fall chinook in the mainstem Snake River and any of the following subbasins: Tucannon River, Grande Ronde River, Imnaha River, Salmon River, and Clearwater River.

(3) Central California Coast Coho Salmon (*Oncorhynchus kisutch*). Includes all coho salmon naturally reproduced in streams between Punta Gorda in Humboldt County, CA, and the San Lorenzo River in Santa Cruz County, CA.

APPLICATION INSTRUCTIONS
AND SUPPLEMENTAL INFORMATION
FOR
PERMITS
UNDER THE
MARINE MAMMAL PROTECTION ACT
ENDANGERED SPECIES ACT
FUR SEAL ACT
FOR
SCIENTIFIC RESEARCH OR ENHANCEMENT

DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Permits Division, F/PR1
Office of Protected Resources
1315 East-West Highway, Rm. 13705
Silver Spring, Maryland 20910-3226
Tel: (301) 713-2289
Fax: (301) 713-0376
website: http://www.nmfs.gov/prot_res/prot_res.html

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Introduction

The National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) share responsibilities under the Marine Mammal Protection Act of 1972 (MMPA) and the Endangered Species Act of 1973 (ESA) for the management of marine mammals in the United States. NMFS has the responsibility for all cetaceans and pinnipeds (except walrus) under the two acts. NMFS has the sole responsibility under the Fur Seal Act of 1966 (FSA). A full list of the marine mammal species under the jurisdiction of NMFS is included in the supplemental information portion of these instructions. The list shows the status of each animal under the ESA and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Animals for which the Fish and Wildlife Service share responsibility or has sole responsibility are annotated on the list.

Under these statutes and implementing regulations, NMFS may issue permits for the taking¹, importing, and exporting of marine mammals, including threatened or endangered species, for scientific purposes or to enhance the propagation or survival of such species (50 CFR Parts 216 and 217-222); and the taking, import, or export of marine mammals for purposes of scientific research, public display, enhancing the survival or recovery of a species or stock, or the taking of marine mammals by no more than Level B harassment for photography for commercial or educational purposes (50 CFR Part 216). Permits to take fur seals are issued under the MMPA and the FSA. All cited regulations apply to parts, products, specimens, and live animals.

Activities For Which These Instructions Apply

These instructions provide the format for preparing scientific research and/or enhancement permits to take marine mammals, under the appropriate statute(s) and jurisdiction of NMFS. These instructions also may apply to threatened or endangered fish and sea turtles that, in rare instances, may be incidentally affected by a research activity primarily geared toward marine mammals (*e.g.*, acoustic studies). If the proposed research included species under NMFS jurisdiction and species under the jurisdiction of USFWS, a joint permit from NMFS and USFWS must be requested/issued.

Application instructions for marine mammals under NMFS jurisdiction can be obtained by calling the Permit Division of the Office of Protected Resources (301/713-2289) or by accessing the NMFS

¹ Under the MMPA, the term “take” is defined as: *To harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.*

The 1994 Amendments to the MMPA statutorily define the term “harassment” as: *Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing a disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).*

Under the ESA, the term “take” is defined as: *To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.*

website: http://www.nmfs.gov/prot_res/prot_res.html. Application instructions for fish and sea turtles (in the marine environment) can be obtained through the Endangered Species Division of the Office of Protected Resources (301/713-1401).

Application instructions for sea turtles (on land) and marine mammal species under USFWS jurisdiction can be obtained by calling the Office of Management Authority, USFWS (1-800-358-2104).

These instructions do **not** apply to the following types of permits/authorizations:

- Public Display under the MMPA;
- Commercial/Educational photography under the MMPA;
- Scientific purposes under the ESA involving fish;
- Scientific purposes under the ESA involving sea turtles;
- Scientific research permits under the MMPA for marine mammals only under USFWS jurisdiction (sea and marine otters, walrus, manatees, dugongs and polar bears); and
- General Authorization for Level B harassment of marine mammals under the MMPA. (See additional information section below).

Guidelines for Using These Instructions

Give Complete Information

An application must be complete before the Permits Division, Office of Protected Resources (F/PR1) can forward it to reviewers and publish a Notice of Receipt in the Federal Register. Incomplete applications will not be processed; instead, additional information will be requested or the application will be returned. Therefore, please provide complete and specific information. When a question does not apply, do not overlook the section, but indicate Not Applicable (N/A). A brief explanation as to why the category is not applicable will expedite processing.

NMFS tries to process all applications in a timely manner. Nevertheless, processing of a **complete** application usually requires 90 days from submission to final action and includes a 30-day public comment period.

Applicants are urged to submit applications at least 120 days prior to the planned initiation of research.

Applicants Who Currently Hold or Have Previously Been Issued a Permit

If an applicant currently holds a permit to take marine mammals, or has held a permit in the past, the new application will not be processed until all reports required to date under such permits have been submitted.

Permit Amendments

Scientific research permits may be amended by the Director, Office of Protected Resources. Requests for amendments to permits should be submitted in writing to the Chief, Permits Division, Office of Protected Resources (F/PR1), and should address all applicable sections of these instructions, including a detailed description of the proposed changes. Amendment requests involving an increase in number, changes of location or species, or more intrusive activities are subject to a 30-day public review and are granted or denied at the discretion of the Director, Office of Protected Resources. Amendment requests must be endorsed and signed by the principal investigator named in the permit. Less intrusive activity or minor changes not involving numbers, species, or locations may be authorized at the discretion of the Director without public review.

Permit Fees:

Section 104(g) of the MMPA provides the authority to establish and charge a reasonable permit fee; however, there is no fee at this time.

ADDITIONAL INFORMATION

General Authorizations (GA):

As noted in footnote 1, the 1994 Amendments to the MMPA, two levels of harassment have been defined: *Level A* and *Level B*. For scientific research activities which do not exceed **Level B Harassment** (*i.e.*, photo-id, behavioral study) on **non-ESA listed species**, there is now a General Authorization (GA) for Scientific Research. Interim Final Regulations establishing the GA (50 CFR 216.45) were published in the Federal Register on October 3, 1994 (59 F.R. 50372) and are available on our website (http://www.nmfs.gov/prot_res/prot_res.html). If an applicant is planning to conduct scientific research on marine mammals that will involve only **Level B Harassment** (*i.e.*, photo-id, behavioral study), the applicant should refer to the website or contact the Permits Division, Office of Protected Resources for assistance.

IMPORTANT: The GA does NOT apply to marine mammal species designated as endangered or threatened under the ESA. Authorization to take ESA-listed species can only occur pursuant to a scientific research permit authorized under the ESA, even if the proposed activities do not exceed Level B Harassment.

In the event that the proposed research involves either (1) ESA listed and non-ESA listed species, and/or (2) both Level A and Level B harassment activities, the scientific research permit is required.

CITES Import/Export Permits:

United States regulations require that imports or exports of wildlife listed on the appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) be accompanied by the proper CITES permit or documentation. This is in addition to the required permits under the ESA and, as applicable, the MMPA. The U.S. agency responsible for implementing CITES is the Office of Management Authority, U.S. Fish and Wildlife Service (1-800-358-2104), <http://permits.fws.gov/>. The CITES status of endangered species and marine mammals under NMFS jurisdiction is indicated on the attached species list. Please note that all cetaceans are included on either Appendix I or II.

Animal Welfare Act (AWA):

The U.S. Department of Agriculture's Animal and Plant Health Inspection Service (USDA/APHIS), has responsibility under the AWA for captive warm-blooded animals, including marine mammals, and has established regulations and standards for animal care, including "Specifications for the Humane Handling, Care, Treatment, and Transportation of Marine Mammals (9 CFR Ch 1, Subpart E)." Most U.S. facilities maintaining marine mammals are required to be licensed or registered by APHIS. For information concerning the AWA and its requirements and the name and address of the Veterinarian in Charge in the State concerned, contact the Regulatory Enforcement and Animal Care staff, USDA/APHIS (301/734-7833) or <http://www.aphis.usda.gov/>.

Beached/Stranded Animals:

NMFS encourages the use of healthy rehabilitated beached/stranded animals in lieu of taking animals from wild populations. Where a captive marine mammal is necessary for the conduct of scientific research, particularly in the case of U.S. coastal pinnipeds, such as California sea lions (*Zalophus californianus*), applicants must justify the need for capturing animals from the wild rather than obtaining them from rehabilitated beached/stranded stock. For information on the availability of these animals contact the appropriate NMFS Regional Office (see attached list).

INSTRUCTIONS

PLEASE READ the INTRODUCTION, the INSTRUCTIONS, the SUPPLEMENTAL INFORMATION, and applicable sections of the ATTACHED PERMIT REGULATIONS BEFORE preparing your application. Reading these sections FIRST will save you time and help you avoid common errors. Please pay particular attention to the attached Permit Regulations (15 CFR Part 902; 50 CFR Parts 216 and 222) as these regulations include both permit issuance criteria and requirements, information that you should find most useful in preparing a complete application.

IMPORTANT

Information should be presented in the following categories. If a section or question does not apply, indicate Not Applicable (N/A) with a brief, but complete, explanation as to why.

I. Title of the Application

Please select a title from below as appropriate. If the application is submitted under more than one Act or for more than one purpose, please select a combination as appropriate --

- A. Application for a Permit for Scientific Research or to enhance the survival or recovery of a stock under the Marine Mammal Protection Act;
- B. Application for a Permit for Scientific Purposes or to enhance the survival or recovery of a stock under the Endangered Species Act;
- C. Application for a Permit for Scientific Research under the Marine Mammal Protection Act and the Fur Seal Act.

II. Date of the Application

III. Applicant

- A. Applicant, PI, CI, Personnel Directly Involved in Taking: State complete name, address, telephone number, and institutional affiliation, if any, of the Applicant. Also list the Principal Investigator (PI), if other than the Applicant, as well as all Co-Investigators (CI), and any other persons to be directly involved in the taking/capture, import, or export.

NOTE: Please refer to the Glossary of personnel terms.

If the Applicant is an institution, partnership, or corporation, describe the relationship between this entity and the PI. If the primary contact is other than the PI, please include the name, address, and telephone number.

A fax number and/or internet mail address will help permit processing.

- B. **Qualifications and Experience:** Provide a curriculum vitae (CV) describing the qualifications and experience of the PI and any CI(s) who will be responsible for the taking. CV's should include a list of publications relevant to the proposed research.

IV. Description of the Marine Mammals to be Taken and/or Imported and the Proposed Activity

A. **Abstract:** Provide an abstract of 200 words or less of the proposed research project, emphasizing the research objectives including the hypothesis(es) to be tested and the manner in which such activity involves the taking, import, or export of marine mammals, or part(s).

B. **Summary of Marine Mammals to be Taken, Imported, or Exported:**

1. **Species Name(s):** List the species (common and scientific names) and, as applicable, the subspecies or population group that may be taken. In the case of a wild capture, list any species that may be incidentally taken during the course of collection activities (*i.e.*, non-target species), including non-marine mammal species such as sea turtles. Use Section IV.C.2. to provide additional required information.
2. **Parts or Specimen Samples:** Where the proposed activity involves marine mammal parts or specimen samples, list the part(s)/sample(s) that will be taken, imported, or exported. Use Sections IV.C.3 and IV.C.4. to provide additional required information.
3. **Status of Affected Stock(s):** For animals in the wild, provide a summary of the best available information concerning the status of the affected species or stock(s) and factors affecting this status (cite sources).

C. **Detailed Description of the Proposed Research Activity (In the Wild or In Captivity):**

1. **Duration of the Project and Locations of Taking:** The overall duration of the research project including the dates and locations of the proposed taking, import, or export. Dates and locations should be identified as specifically as possible, including ports of entry/export.

NOTE: Permits may be issued for a maximum of 5 years, after which a new permit or amendment must be requested.

2. **Types of Taking Involved and Estimate of Number(s) of Animals that May be Taken:** Provide a description of the activities that will be conducted (e.g., aerial surveys, vessel surveys, photo-identification, tagging, biopsy sampling, capture/maintaining, etc.) and the species and number of animals that may be taken by Level A or Level B harassment during the course of those activities. Clearly indicate the maximum number and species of animals that may be taken, as well as the actual or estimated age (i.e., neonate, pup/calf, juvenile, adult), size, sex, and reproductive condition of the animals at the time of taking, import, or export. State whether the animals will be taken more than once and the frequency of the take; and whether the same animals will be taken in more than one manner, and if so, how.

It is important to account for multiple takes per individual animal. For example, a researcher working with 120 harbor seals may want to flipper tag all 120, bleach mark 70, collect blood samples from 50 and attach satellite tags to 20. It is important to explain how many individuals would have all these procedures vs. how many would only have some of the procedures.

Submit a matrix or table that clarifies species, numbers, takes, activities, age/sex class, and locations.

Include a justification of the proposed sample size(s) for each type of take. For certain activities (e.g., acoustic experiments or non-traditional research) a power analysis showing statistical significance will expedite processing.

3. **Research in the Wild:** Where a take in the wild is involved, provide a description of the techniques and equipment to be used to approach, capture, restrain, mark, tag, and/or collect tissues and other samples. Indicate as appropriate: (a) the kinds, numbers, and sizes of samples to be taken and the sampling method; (b) the marks, electronic or visual tags, or other attached instruments to be used, including their dimensions, weights, method of application, location of attachment, the expected duration of attachment, and method of release; (c) any drugs or other substances to be used, including the name, dosage, purpose, and method of administration; (d) frequency and period of time each animal may be restrained and the method of restraint; (e) methods of tissue sampling and types of samples to be taken from each animal; and/or (f) in the case where unweaned pinniped pups will be taken, identify measures that will be used to ensure pups are returned to their mothers.

NOTE: This section should clearly describe how the research objectives will be met.

4. **Removing a Marine Mammal from the Wild:** If the proposed activity involves removing a marine mammal from the wild and a captive stock of the species concerned is available, an explanation why suitable animal(s) cannot be obtained from captive stock.
5. **Taking of Marine Mammal Parts or Specimen Samples:** If the activity involves the taking of marine mammal parts, provide a description of the part(s) including the number

of coding where such part(s) have been labeled or have otherwise been marked previously; the original source of the part(s) (e.g., beached or stranded animals, captive animals, animals obtained from the wild, imported, or unknown); the location and date of original collection; and the name/identity of the collector.

Provide a description of what arrangements have been made, if any, for their disposition. For example, describe arrangements made with a museum or other institutional collection to ensure that hard and soft tissues of present or potential future interest will remain available for scientific research or enhancement purposes. Please note that NMFS has established a National Marine Mammal Tissue Bank that is a source and repository of material for qualified researchers. For more information contact the Director, Office of Protected Resources (301) 713-2319.

NOTE: Permits cannot be issued for personal collections of marine mammal parts or specimen samples.

6. **Import/Export of Marine Mammals/ Marine Mammal Parts:** If applicable, describe the import/export of marine mammals or parts, including: The country of exportation (*i.e.*, the country from which the marine mammal or marine mammal part is to be imported into the United States) and the country of origin (*i.e.*, the country where the animal was originally taken from the wild) if different from the country of exportation. For exports, provide the destination country.

Provide a description of how the marine mammal(s) or marine mammal part(s) to be imported was taken in the country of origin. State whether the animals were, at the time of taking, either pregnant or lactating, or either unweaned or less than eight months old, whichever occurred later. If so, provide full justification for taking marine mammals under such circumstances. If the marine mammal(s) or marine mammal part(s) was subsequently exported to a country different from the country of origin, cite the date(s), and the manner and circumstances under which it was imported into the country of exportation.

If the import is necessary for the protection or welfare of the marine mammals, discuss the circumstances involved and any alternatives considered.

7. **Research on Captive Animals:** In addition to the information requested in Section C.1-6 (above) submit as applicable for captive animals (*i.e.*, animals are to be collected, are already captive, or are beached/stranded animals):
- (a) A detailed description of the manner of capture, including gear to be used;
 - (b) A description of the pen, tank, container, cage, cradle, or other device used post-capture and thereafter during transportation to the holding or permanent facility. Describe the mode of transportation, special care during transport, and the length of time required for the transfer from the capture site to initial holding facility and then to the permanent facility;
 - (c) If the source stock is to be beached/stranded marine mammals, indicate the name and location of the rehabilitation facility;
 - (d) If the source stock is from marine mammals already in captivity (other than beached/stranded animals) indicate the name and location of the facility, and identify the specific animals involved in the proposed activity;
 - (e) A copy of any license or registration issued by the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture, any outstanding variances granted by APHIS, and the most recent APHIS inspection report;
 - (f) The comments and recommendations of any relevant Institutional Animal Care and Use Committee established under the Animal Welfare Act (AWA) (7 U.S.C. 2131 et seq.);
 - (g) A written statement from the responsible veterinarian certifying that the facilities, methods of care and maintenance, and methods of transport will be adequate to ensure the well-being of the marine mammals and comply with all applicable care and transport standards established under the AWA;
 - (h) If release of captive marine mammals to the wild is proposed, state the length of time the animals will be held, and describe the protocols for the release addressing mitigation measures for the following concerns:
 - disease transmission between both released animals and the wild population;
 - unwanted genetic exchanges between introduced and endemic stocks;
 - ability of the released animals to forage and protect themselves from predators; and
 - elimination of behavioral patterns acquired during captivity that could prove detrimental to the released animals or the social structure of local populations.

8. **Background and Review of Research:** A description of the background and a review of the current knowledge of the problem under investigation. Indicate relevant literature (with citations) and an explanation of the rationale for the methodology. The description should include the expected nature and significance of research results and how the activities being requested support an overall research plan.
9. **Lethal Take:** If an intentional lethal take is involved, an explanation of why a nonlethal method is not feasible and how the research results will directly benefit the species or stock, or fulfill a critically important research need.

IMPORTANT: If unintentional mortality is possible, show the maximum number of animals from each species that may be killed.

10. **Research on Endangered Species:** If the research involves a species or stock listed as endangered or threatened under the ESA, or designated as depleted under the MMPA, provide an explanation of why the proposed research cannot be conducted using an alternative species or stock. Explain how the expected research results would benefit the species or stock or contribute significantly to fulfilling a critically important research need. For example, explain how the research contributes to the objectives identified in the species recovery or conservation plan.
- D. Describe the Anticipated Effects of the Proposed Activity: Provide a description of the effects of the proposed taking, import, or export, including:
1. **Effects on Individual Animals;**
 2. **Effects of Incidental Harassment;**
 3. **Effects on Stocks;**
 4. **Stress, Pain, and Suffering:** If the proposed research will or may cause stress, pain, or suffering, explain why there are no feasible alternative methods for obtaining the data or information being sought. Describe any measures to be taken to minimize such adverse effects of the research and to ensure that the taking or other permitted activity will be conducted in a humane manner. If the applicant has consulted with an animal care committee or similar oversight group, include their assessment, advice or recommendations concerning the proposed research;
 5. **Measures to Minimize Disturbance:** Specify what the applicant considers necessary and unnecessary and inappropriate disturbance, what will be done to avoid or minimize disturbance, what criteria will be used to judge when disturbance occurs, and what will be done if evidence of disturbance is observed, *e.g.*, back away if there is any evidence of avoidance, terminate activities after the first, second, or third incident of altering approach speed or course in response to animals attempting to avoid approach, etc.;

6. **National Environmental Policy Act (NEPA) Considerations:** Under the National Environmental Policy Act (NEPA), NMFS is required to determine if an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required, or if the research activity is categorically excluded from the requirement to prepare an EA or EIS. In order for NMFS to make this determination, describe whether:

- (a) The research involves new, innovative, controversial, or experimental equipment or techniques;
- (b) the research techniques are likely to be adopted by other researchers;
- (c) the location in which the research will be conducted is of special importance to other marine mammals;
- (d) the proposed activities involve unique or unknown risks or whether the likely effects are highly uncertain;
- (e) any aspect of the research possibly affects the public health or safety of humans;
- (f) the activity may have a significant cumulative effect, considering existing and potential activities;
- (g) the activity causes loss or destruction of significant scientific, cultural, or historic resources;
- (h) there will be an adverse effect on endangered or threatened populations or stocks or their habitat;
- (i) the activity is in violation of a Federal, State, or local law for environmental protection.

E. Publication of Results: Indicate where and, if possible, when the research results are expected to be published or otherwise made available to the public and the scientific community.

F. Proposal and Previous and Other Permits:

1. **Formal Research Proposal:** A copy of the formal research proposal or contract, if one has been prepared. Please note that activities discussed in the research proposal that require a permit will not be considered unless they have been specifically requested in the application. Applicants who are employed by NOAA should state how the project fits in with NOAA's Strategic Plan, citing the objective and the element.
2. **Sponsors and Cooperating Institutions:** If applicable, provide the names and addresses of cooperating institutions and individuals.
3. **Previous Permits:** If issued previous permits for the taking, import, or export of marine mammals and a final report has not yet been submitted, ensure that all required reports to date have been submitted.
4. **Other Permits:** Indicate whether other Federal and State permits (*e.g.*, Fish and Wildlife Service, NOAA Marine Sanctuaries, the Army Corps of Engineers) are being sought in connection with the requested research. Please note that research in the coastal zone surrounding various states including Alabama, Hawaii, Washington, and Guam and the Commonwealth of the Northern Marianas, must meet the criteria for Coastal Zone Consistency before a permit can be issued. These jurisdictions have up to six months to make a determination of consistency. It is the applicant's responsibility to seek this determination. Please state in the application if such a determination has been sought and when a decision is expected.

V. **Special Considerations for Applicants Working Abroad
(for Exports of Parts/Samples or Live Animals from the U.S.)**

Foreign applicants requesting the export of marine mammals, or marine mammal parts/products from the United States, must submit their applications to NMFS through the appropriate agency of the foreign government (*e.g.*, the CITES management authority). The appropriate agency of the foreign government must certify the accuracy of the information submitted in the application.

Additionally, if the application is for the export from the United States of **living animals** subject to the MMPA, ESA, or FSA, then the appropriate agency of the foreign government must certify that:

the laws and regulations of the government involved allow the enforcement of requirements equivalent to the requirements of the ESA, MMPA, FSA, and AWA, as applicable, and that government will enforce such requirements.

VI. Certification and Signature

The following Certification, followed by the Signature, Name, and Title of the Applicant or responsible party, must be submitted as the concluding section of the application.

"I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under one or more of the following statutes and the regulations promulgated thereunder, as indicated in Section I. of this application:

The Endangered Species Act of 1973 (16 U.S.C. 1531-1543) and regulations (50 CFR 222.23(b)); and/or

The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and regulations (50 CFR Part 216); and/or

The Fur Seal Act of 1966 (16 U.S.C. 1151-1175).

I also understand that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties provided under the Endangered Species Act of 1973, the Marine Mammal Protection Act of 1972, or the Fur Seal Act of 1966, whichever are applicable."

- Signature of Applicant and Date of Signature
- Typed or Printed Name of Applicant
- Title of Applicant

WHERE TO SEND APPLICATIONS

[In addition to the hard copies of the application, submission of an electronic version on disk in either WordPerfect or Word will facilitate processing.]

Submit an original and two signed copies of the completed application to:

Chief, Permits Division, F/PR1
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway, Room 13705
Silver Spring, Maryland 20910-3226

All permit documentation including the application, permit and amendments, reports, and inventory information required herein, is considered public information and as such, is subject to the Freedom of Information Act (FOIA). All responses to the collection of information are required to obtain a permit.

Public Reporting Burden

Public reporting burden for this collection of information is estimated to average 29 hours per response, including the time for reviewing instructions, search existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless the collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

Glossary of Terms

Applicant/ Permit Holder - Person, institution, or agency who is ultimately responsible for all activities of any individual who is operating under the authority of the permit.

Principal Investigator (PI) - The individual primarily responsible for the taking, importation, export, and any related activities conducted under the permit issued for scientific research or enhancement.

Co-investigators (CI) - The on-site representative of the PI. Conducts or directly supervises the conduct of the taking, import, and export activities authorized under a Permit.

Research Assistants - Individuals who work under the direct supervision of the PI and/or CI (i.e., the **Researchers**), and who are authorized to record data and serve as safety observers and boat tenders.

Marine Mammal Species Under NMFS Jurisdiction Including Status under the MMPA, ESA and CITES			
	SPECIES LIST		
Scientific Name	Common Name	MMPA, ESA stat.	CITES App.
Cetacea	The Whales, Dolphins and Porpoises		
Mysticeti	The Baleen Whales		
Balaenidae	The Bowhead and Right Whale Family		
<i>Balaena mysticetus</i>	Bowhead whale	D and E	I
<i>Eubalaena australis</i>	Southern right whale	E	I
<i>Eubalaena glacialis</i>	Northern right whale	E	I
Balaenopteridae	The Rorqual Family		
<i>Balaenoptera acutorostrata</i>	Minke whale		I
<i>Balaenoptera borealis</i>	Sei whale	E	I
<i>Balaenoptera edeni</i>	Bryde's whale		I
<i>Balaenoptera musculus</i>	Blue whale	E	I
<i>Balaenoptera physalus</i>	Finback whale	E	I
<i>Megaptera novaeangliae</i>	Humpback whale	E	I
<i>Rorqual HYBRID</i>	Rorqual HYBRID		
Eschrichtiidae	The Gray Whale Family		
<i>Eschrichtius robustus</i>	Gray whale (Eastern Pacific)	R	I
<i>Eschrichtius robustus</i>	Gray whale (Western Pacific)	E	I
Neobalaenidae	The Pygmy Right Whale Family		
<i>Caperea marginata</i>	Pygmy right whale		I
Odontoceti	The Toothed Whales, Dolphins and Porpoises		
Delphinidae	The Dolphin Family		
<i>Cephalorhynchus commersonii</i>	Commerson's dolphin		II
<i>Cephalorhynchus eutropia</i>	Black dolphin		II
<i>Cephalorhynchus heavisidii</i>	Heaviside's dolphin		II
<i>Cephalorhynchus hectori</i>	Hector's dolphin		II
<i>Delphinus delphis</i>	Common dolphin; Saddleback dolphin		II
<i>Feresa attenuata</i>	Pygmy killer whale		II
<i>Globicephala macrorhynchus</i>	Short-finned pilot whale		II
<i>Globicephala melas</i>	Long-finned pilot whale		II
<i>Grampus griseus</i>	Risso's dolphin		II
<i>Lagenodelphis hosei</i>	Fraser's dolphin; Sarawak dolphin		II
<i>Lagenorhynchus acutus</i>	Atlantic white-sided dolphin		II

Scientific Name	Common Name	MMPA, ESA stat.	CITES App.
<i>Lagenorhynchus albirostris</i>	White beaked dolphin		II
<i>Lagenorhynchus australis</i>	Peale's dolphin		II
<i>Lagenorhynchus cruciger</i>	Hourglass dolphin		II
<i>Lagenorhynchus obliquidens</i>	Pacific white-sided dolphin		II
<i>Lagenorhynchus obscurus</i>	Dusky dolphin		II
<i>Lissodelphis borealis</i>	Northern right whale dolphin		II
<i>Lissodelphis peronii</i>	Southern right whale dolphin		II
<i>Orcaella brevirostris</i>	Irrawaddy dolphin		II
<i>Orcinus orca</i>	Killer whale; Orca		II
<i>Peponocephala electra</i>	Melon-headed whale		II
<i>Pseudorca crassidens</i>	False killer whale		II
<i>Sotalia fluviatilis</i>	Tucuxi		I
<i>Sousa chinensis</i>	Indo-Pacific humpbacked dolphin		I
<i>Sousa teuszii</i>	Atlantic humpbacked dolphin		I
<i>Stenella attenuata</i>	Pantropical spotted dolphin (except Northeastern offshore)		II
<i>Stenella attenuata</i>	Pantropical spotted dolphin (Northeastern offshore)	D	II
<i>Stenella clymene</i>	Clymene dolphin		II
<i>Stenella coeruleoalba</i>	Striped dolphin		II
<i>Stenella frontalis</i>	Atlantic spotted dolphin		II
<i>Stenella longirostris</i>	Spinner dolphin (Hawaiian, Worldwide except ETP)		II
<i>Stenella longirostris</i>	Spinner dolphin (ETP - Eastern Tropical Pacific)	D	II
<i>Steno bredanensis</i>	Rough-toothed dolphin		II
<i>Tursiops truncatus</i>	Bottlenose dolphin (except Mid Atlantic coastal migratory stock)		II
<i>Tursiops truncatus</i>	Bottlenose dolphin (Mid Atlantic coastal migratory stock)	D	II
<i>Dolphin HYBRID</i>	Dolphin HYBRID		
Monodontidae	The Narwhal and White Whale Family		
<i>Delphinapterus leucas</i>	Beluga whale; white whale		II
<i>Monodon monoceros</i>	Narwhal		II
Phocoenidae	The Porpoise Family		
<i>Australophocaena dioptrica</i>	Spectacled porpoise		II
<i>Neophocaena phocaenoides</i>	Finless porpoise		I
<i>Phocoena phocoena</i>	Harbor porpoise		II
<i>Phocoena sinus</i>	Vaquita; Cochito	E	I
<i>Phocoena spinipinnis</i>	Burmeister's porpoise		II
<i>Phocoenoides dalli</i>	Dall's porpoise		II
<i>Porpoise HYBRID</i>	Porpoise HYBRID		

Scientific Name	Common Name	MMPA, ESA stat.	CITES App.
Physeteridae	The Sperm Whale Family		
<i>Kogia breviceps</i>	Pygmy sperm whale		II
<i>Kogia simus</i>	Dwarf sperm whale		II
<i>Physeter catodon</i>	Sperm whale	E	I
Platanistidae	The River Dolphin Family		
<i>Inia geoffrensis</i>	Amazon River dolphin		II
<i>Lipotes vexillifer</i>	Chinese River dolphin; Beiji	E	I
<i>Platanista gangetica</i>	Ganges River dolphin; Ganges susu		I
<i>Platanista minor</i>	Indus River dolphin; Indus susu	E	I
<i>Pontoporia blainvillei</i>	Franciscana; La Plata River dolphin		II
Ziphiidae	The Beaked Whale Family		
<i>Berardius arnuxii</i>	Arnoux's beaked whale		I
<i>Berardius bairdii</i>	Baird's beaked whale		I
<i>Hyperoodon ampullatus</i>	Northern bottlenose whale		I
<i>Hyperoodon planifrons</i>	Southern bottlenose whale		I
<i>Mesoplodon bidens</i>	Sowerby's beaked whale		II
<i>Mesoplodon bowdoini</i>	Andrew's beaked whale		II
<i>Mesoplodon carlhubbsi</i>	Hubbs' beaked whale		II
<i>Mesoplodon densirostris</i>	Blainville's beaked whale; Dense beaked whale		II
<i>Mesoplodon europaeus</i>	Gervais' beaked whale; Gulf Stream beaked whale		II
<i>Mesoplodon ginkgodens</i>	Ginkgo-toothed whale		II
<i>Mesoplodon grayi</i>	Gray's beaked whale		II
<i>Mesoplodon hectori</i>	Hector's beaked whale		II
<i>Mesoplodon layardii</i>	Strap-toothed whale		II
<i>Mesoplodon mirus</i>	True's beaked whale		II
<i>Mesoplodon (Indopacetus) pacificus</i>	Longman's beaked whale		II
<i>Mesoplodon peruvianus</i>	Pygmy beaked whale		II
<i>Mesoplodon stejnegeri</i>	Stejneger's beaked whale		II
<i>Tasmacetus shepherdii</i>	Shepherd's beaked whale		II
<i>Ziphius cavirostris</i>	Cuvier's beaked whale		II
Beaked Whale HYBRID	Beaked Whale HYBRID		
Carnivora	The Pinnipeds, Bears, Mustelids, etc.		
Pinnipedia	The Seals, Sea Lions and Walrus		
Otariidae	The Eared Seal Family		
<i>Arctocephalus australis</i>	South American fur seal		II
<i>Arctocephalus forsteri</i>	New Zealand fur seal; West Australian fur seal		II
<i>Arctocephalus galapagoensis</i>	Galapagos fur seal		II

Scientific Name	Common Name	MMPA, ESA stat.	CITES App.
<i>Arctocephalus gazella</i>	Antarctic fur seal		II
<i>Arctocephalus philippii</i>	Juan Fernandez fur seal		II
<i>Arctocephalus pusillus</i>	South African fur seal; Cape fur seal		II
<i>Arctocephalus townsendi</i>	Guadalupe fur seal	T	I
<i>Arctocephalus tropicalis</i>	Subantarctic fur seal; Amsterdam Island fur seal		II
<i>Callorhinus ursinus</i>	Northern fur seal (except Pribilof Island population)		
<i>Callorhinus ursinus</i>	Northern fur seal (Pribilof Island population)	D	
<i>Eumetopias jubatus</i>	Steller sea lion; Northern sea lion (Western stock)	E	
<i>Eumetopias jubatus</i>	Steller sea lion; Northern sea lion (Eastern stock)	T	
<i>Neophoca cinerea</i>	Australian sea lion		
<i>Otaria byronia</i>	South American sea lion		
<i>Phocarctos hookeri</i>	Hooker's sea lion		
<i>Zalophus californianus</i>	California sea lion		
<i>Eared Seal (Sea Lion) HYBRID</i>	Eared Seal (Sea Lion) HYBRID		
Phocidae	The True Seal Family		
<i>Cystophora cristata</i>	Hooded seal		
<i>Erignathus barbatus</i>	Bearded seal		
<i>Halichoerus grypus</i>	Gray seal		
<i>Hydrurga leptonyx</i>	Leopard seal		
<i>Leptonychotes weddellii</i>	Weddell seal		
<i>Lobodon carcinophagus</i>	Crabeater seal		
<i>Mirounga angustirostris</i>	Northern elephant seal		
<i>Mirounga leonina</i>	Southern elephant seal		II
<i>Monachus monachus</i>	Mediterranean monk seal	E	I
<i>Monachus schauinslandi</i>	Hawaiian monk seal	D and E	I
<i>Monachus tropicalis</i>	Caribbean monk seal; West Indian monk seal	E	I
<i>Ommatophoca rossii</i>	Ross seal		
<i>Phoca caspica</i>	Caspian seal		
<i>Phoca fasciata</i>	Ribbon seal		
<i>Phoca groenlandica</i>	Harp seal		
<i>Phoca hispida</i>	Ringed seal		
<i>Phoca hispida saimensis</i>	Saimaa seal (subspecies of ringed seal)	E	
<i>Phoca largha</i>	Larga seal; Spotted seal		
<i>Phoca sibirica</i>	Baikal seal		
<i>Phoca vitulina</i>	Harbor seal		
<i>Seal HYBRID</i>	Seal HYBRID		
U.S. Fish and Wildlife Jurisdiction includes the following:			
Odobenidae	The Walrus Family		

Scientific Name	Common Name	MMPA, ESA stat.	CITES App.
<i>Odobenus rosmarus</i>	Walrus		III
Fissipedia	Bears, Otters, etc.		
Ursidae	The Bear Family		
<i>Ursus maritimus</i>	Polar bear		II
Mustelidae	The Otter Family		
<i>Enhydra lutris</i>	Southern sea otter	T	I
<i>Lutra (Lontra) felina</i>	Marine otter	E	I
Sirenia	Manatees and Dugong		
Dugongidae	The Dugong Family		
<i>Dugong dugon</i>	Dugong	E	I/II
Trichechidae	The Manatee Family		
<i>Trichechus inunguis</i>	Amazonian manatee	E	I
<i>Trichechus manatus</i>	West Indian manatee	E	I
<i>Trichechus senegalensis</i>	West African manatee	T	II

Key:

D = Depleted (under the MMPA)

E = Endangered (under the ESA)

R = Recovered (under the ESA; no longer considered threatened or endangered)

T = Threatened (under the ESA)

NMFS Regional Offices

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713-2289);

Regional Administrator, Alaska Region, NMFS, 709 West 9th Street, 4th Floor, Juneau, Alaska 99801, (907/586-7221);

Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, Massachusetts 01930, (978/281-9138);

Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive, St. Petersburg, Florida 33702-2432, (727/570-5312);

Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Bin C15700, Building 1, Seattle, Washington 98115-0070, (206/526-6150);

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Long Beach, California 90802-4213, (562/980-4000);

Protected Species Coordinator, Pacific Islands Area Office, NMFS, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, Hawaii 96814-4700, (808/973-2937).

ATTACHMENT 4

Application Instructions for Permits Scientific Research and Enhancement Permits and Report Information Collection Justification.

I. **Title of the Application:** 50 CFR 216.33 and 222.308

Self-explanatory, identifies the type of permit requested, i.e. Scientific Research, Public Display, or Enhancement under the MMPA, ESA and/or FSA. It should be noted that permits for public display of fur seals cannot be authorized because of the determination of depletion for that species. If a determination of non-depletion can be made later, permits will again be authorized.

II. **Date of Application:** 50 CFR 216.33(a-c) and 222.308

Self-explanatory.

III. **Applicant and Personnel:** 50 CFR 216.33(a), 216.35(f), 216.41(a) and 222.308.

A. Self-explanatory. Needed for identification purposes. Also, the permit holder will be ultimately responsible for all activities of individuals operating under the permit.

B. **Qualifications and Experience of the PI, and CIs:** 50 CFR 216.34(a)(5-6), 216.35(f-h) and 222.308.

NOAA Fisheries needs assurance that the researchers know what they are doing so that (1) the health and well-being of the marine mammals is guaranteed, (2) the take will be humane and (3) the research will be *bona fide* and necessary.

IV. **Description of Proposed Scientific Research:** 50 CFR 216.3, 216.34, 216.41, and 222.308(b).

A. **Abstract/Statement of Work:** 200 words or less describing the project including hypotheses. 50 CFR part 216.33(d)

NOAA Fisheries is required to publish notice of receipt of an application in the Federal Register. That Notice must summarize the application including species/numbers of animals requested, location, etc. To ensure that an accurate summary of the application is published, applicants are requested to include a short abstract of the request.

B. **Summary of marine mammals to be taken, imported or exported:** 50 CFR 216.33(c)(2), 216.37, 216.41(b)(6)(i), 216.41(c)(v), and 222.308.

NOAA Fisheries also needs a description of the animals to be assured that imported marine mammals, except for scientific research or for enhancing the survival or recovery of a species or stock, will not be taken in violation of Section 102(b) of the MMPA (i.e. pregnant, nursing, less than 8 months old or from a depleted stock). For other takings, the information is needed to make determinations that taking is appropriate. For example, not taking breeding-age females unless necessary, taking young or juveniles in preference to breeding adults, and not taking pregnant or nursing females unless it is part of the research design. In cases of enhancement, a determination whether the species or stock is in need of enhancement for its survival or recovery must be made.

Section 102(b) of the MMPA restricts the import of marine mammals from depleted stocks unless the import is for scientific research or for enhancing the survival or recovery of a species or stock. The MMPA also prohibits takings which could have a significant effect on a species or stock of marine mammal. Therefore, in order for NOAA Fisheries to assess individual effects, applicants are asked in B.3. to indicate the known status of stocks of each species to be taken in the collection area.

All of these information items are requested of applicants in IV.A. and B. This information is also needed for assurance that the applicant is applying for a permit under the correct Act.

C. Detailed description of the proposed research activity (in the wild or in captivity): 50 CFR 216.34; 216.41(b), 216.37 (a-c); 222.308(c).

1. Duration of the project and locations of the taking 216.35(b):

Provides basis to determine whether it is likely that the objectives will be met during the time allotted and with the available resources. Section 104(b)(1)(C) requires that permits specify the period during which the permit is valid.

2.-3., 9. Types of taking involved and estimate of numbers...:Research in the wild...:

Section 104(b) of the MMPA requires permits to specify the number and kind of marine mammals authorized to be taken, the manner and location of the taking, and the period of validity for the permit. Also, under Section 104(c)(1) of the MMPA requires permits to specify the methods of capture, supervision, care and transportation and that the taking is consistent with the purposes of the MMPA. Section 104(c)(3) of the MMPA requires applicants for scientific research permits to submit information indicating that the taking is required to further a *bona fide* scientific purpose. In addition, it requires that no permit shall authorize the killing of a marine mammal unless the applicant demonstrates that a nonlethal method for carrying out the research is not feasible.

4. Removing a marine mammal from the wild: 216.27(b)(4)

NOAA Fisheries, through stranding networks rescues stranded marine mammals and has a policy that these animals (mostly seals and sea lions) will be used if possible before allowing other animals to be taken from the wild. Most takings of

pinnipeds for public display will be from animals stranded and rehabilitated. Stranded and captive marine mammals may also be used for scientific research under the appropriate conditions and circumstances in lieu of a take from the wild. This protects wild stocks from additional impacts.

5. Taking of marine mammal parts or specimen samples: 216.37

Marine mammal parts are also protected under the Acts and their disposition must be authorized by NOAA Fisheries. The information requested of applicants ensures that such parts will either remain available for purposes benefitting scientific research or protected species, or be disposed of in an authorized manner.

6. Import/Export of marine mammals/marine mammal parts: 50 CFR part 14; 216.33, and 216.37... Country of exportation,...origin or destination country...: 50 CFR 216.36(a)(1)(iii).

The MMPA requires NOAA Fisheries to determine that any taking will be humanely carried out before any permit authorizing a take can be issued. This applies to takings outside the jurisdiction of the United States if the takes are intended for importation into the United States. To satisfy this requirement NOAA Fisheries needs to know the country in which the taking will occur, how the taking will be conducted and the marine mammal management program of the country of taking.

Protection or welfare: 50 CFR 216.33(e)(6). An exception to certain restrictions in the Acts on the export or import of protected species is provided if the import or export is necessary to benefit the health or welfare of the protected species concerned. This information is essential for NOAA Fisheries to make a determination as to whether this exception is applicable.

7. Research on captive animals: 50 CFR 216.27, 216.34(a)(1) and (6); 216.34(e); 216.41(b)(6); 222.308.

(a)-(b), (g). In compliance with Section 104(b)(2)(B), NOAA Fisheries requires that applicants submit information sufficient to support a determination that the taking will be humane and does not present any unnecessary risk to the animal's health and welfare. To make this determination, applicants must describe the manner of capture, a description of the transportation and holding facilities, and a statement from the attending veterinarian ensuring the well-being of the animals during capture and transit to the initial holding facility.

(c). NOAA Fisheries needs this information to ensure authorization needed under 50 CFR 216.27(c) has been obtained as it relates to the disposition of nonreleasable rehabilitated beached and stranded marine mammals for special exception permit purposes.

(d). Identification needed for Marine Mammal Inventory.

(e)-(f). The Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) is responsible under the Animal Welfare Act (AWA) for captive marine mammals and has established regulations and standards, "Specifications for the Humane Handling, Care, Treatment, and Transportation of Marine Mammals" (9 CFR Part 3, Subpart E). Most U.S. facilities maintaining marine mammals are required to be licensed or registered by Agriculture. Researchers do not need to comply with APHIS standards on the care and welfare of marine mammals held in captivity if their research protocol justifies a variance from the standards and if the research institute's animal care specialists verify that the variance is necessary to carry out the research. Registered facilities must identify themselves, any variances, and state whether the facility can hold the requested animals. Applicants must furnish supporting documentation regarding the facilities' compliance with these standards before any permit involving captive maintenance can be issued. All of this information is necessary for NOAA Fisheries to determine whether applicable and/or comparable care and maintenance standards are or will be met, and whether the taking is humane. If this information is not submitted, NOAA Fisheries cannot not issue a permit.

(h). Protocols for release...: 50 CFR 216.35(e). A scientific research permit is required for the release of captive marine mammals. As in the case of the release of rehabilitated beached and stranded animals (§216.27(a)(1)(i) and (a)(3)), NOAA Fisheries needs this information in order to make a determination of whether the release will adversely affect the wild population and whether additional permit conditions to improve likelihood of success should be imposed.

8. Background and review of research:

The applicant is to provide a description of similar research on the same or comparable species or stock, and, whether such research has been or is being conducted. This information is essential for NOAA Fisheries to make the determination required under Section 104(c) of the MMPA that the proposed research is *bona fide*.

9. Lethal take: 50 CFR 216.41(b)(2) and (c)(1)(v).

This information is necessary to ensure that the prohibitions and restrictions of the Acts on the lethal take of protected species are taken into consideration prior to authorization of and import/export of a marine mammal or marine mammal part.

10. Research on endangered species: 222.308(c)(4)

This information must be submitted by the applicant to provide sufficient information for NOAA Fisheries to make the determinations required under Section 104(c)(4) of the MMPA and Section 10(a)(1)(A) of the ESA regarding enhancement permits, and to make certain findings when a permit is issued. The applicant must demonstrate the proposed activity furthers an enhancement purpose.

D. Describe the anticipated effects...: 50 CFR 216.33(c)(v) and (d)(i and iv); 216.34(a)(4); 216.41(b)(4); and 222.308(c)(2) and (5).

Under the National Environmental Policy Act, NOAA Fisheries must assess the effects, both case-by-case and cumulative, of permitted activities. In most cases this information will support a conclusion that the categorical exclusion for permits is appropriate and an environmental assessment or impact statement is not required. The information requested in D.1-6 is needed to make such assessments. The information in D.1-5 is also required to determine the humaneness of the take.

E. Publication of Results: 50 CFR 216.41(c)(ii).

This information is essential for NOAA Fisheries to determine that the research meets the definition of *bona fide*, as defined at 50 CFR 216.3.

F. Proposal and previous and other permits:

1. Formal Research Proposal: 50 CFR 222.23(b)(5)(iii).

A copy of the applicant's research proposal is to be submitted if one has been prepared. This information supplements that submitted in IV.D. above.

2. Sponsors and cooperating institutions:

The names and addresses of sponsors and/or cooperating institutions is needed to support the permit applicant's qualification credentials. It is more likely that sponsors will oversee the applicant's research and that the research will be carried out in a responsible and humane manner.

3. Previous permits:

This information ensures that permits are not issued to applicants that are not in full compliance with the terms and conditions of existing permit(s). Applicants holding previously issued scientific research and enhancement permits are expected to report progress on that research annually (see Reports below). Annual reports also allow NOAA Fisheries to monitor numbers of animals taken. This information is necessary for the assessment of *bona fide*.

Additionally, applicants holding captive marine mammals should provide an update to their inventory. These permit holders are required to notify NOAA Fisheries within 15 days (30 days for death or births) of any changes to the status of these animals (i.e., acquisitions, transfers, transports, sales and exports) for the NOAA Fisheries inventory including a description of the individual marine mammals concerned and any relevant and identifying characteristics.

4. Other permits: 50 CFR 216.35.

Proof of compliance with other applicable Federal and state laws is required before a permit will be issued.

V. Special considerations for Applicants working abroad (exports of parts/samples or live animals from the United States): 50 CFR 216.33(b).

Section 104(c)(9) of the MMPA states, "No marine mammal may be exported for the purpose of public display, scientific research, or enhancing the survival or recovery of a species or stock unless the receiving facility meets standards that are comparable to the requirements that a person must meet to receive a permit...". Information is needed to assess the ability of the foreign applicant to conduct activities within the parameters comparable to those that a U.S. entity would to be consistent with U.S. law. NOAA Fisheries must rely on independent evidence upon which to base a conclusion as to the reliability of statements concerning information set forth by foreign applicants in their applications as well as independent evidence that the government having jurisdiction over the facility has the appropriate laws and regulations to ensure compliance with permit conditions (and will do so), and will provide NOAA Fisheries with essential reports. Therefore, no application from for export will be considered unless all of the certifications at §216.33(b) are provided.

A.& B. Protected species laws, etc. of, and manner of taking in, origin country:

Essentially, the applicant is required to submit this information to ensure that (1) applicable law is met, whether it is U.S. or foreign and (2) that protected species taken (including held captive) in a foreign country are not taken in an inhumane manner because of the less-protective laws of a foreign country.

VI. Certification and Signature: 50 CFR 216.33(a) and 222.23(b).

Needed to make applicants aware that they must be truthful in statements made within the application. Also required by 18 U.S.C. 1001.

APPLICATION INSTRUCTIONS FOR PUBLIC DISPLAY (PD) PERMITS

50 CFR 216.43 reserved for public display provisions not codified; section 104(c) of the MMPA as amended by P.L. 103-238.

Application instructions for public display permit applicants reflect the 1994 amendments to the MMPA. Section 104(c)(2) of the MMPA was amended whereby the need to obtain a public display permit is limited to captures of marine mammals from the wild or the import of marine mammals/marine mammal parts.

Sections I-III correspond to those in the Application Instructions for Scientific Research and Enhancement permits. The Certification sections, VI. for Scientific Research and VIII. for Public Display are the same. Paragraphs C.8. through C.10., paragraph E., and paragraph F.1. in section IV for Scientific Research do not apply to section IV for Public Display. All other information requested in section IV applies to both Scientific Research and Public Display, although in a different order.

V. **Import:** 50 CFR part 14; 50 CFR 216.35(c-d); 216.36 (a)(iii); 216.37; and 222.23(d)(3).

A-D. Since the AWA standards for care, maintenance and transportation are not enforceable by APHIS until the marine mammal reaches the United States, NOAA Fisheries can condition permits to ensure the well-being of the animals while in transit in the foreign country and to ensure that the applicant has planned appropriately for the animal(s) during transport.

F. **Description of taking...**: Except for purposes of scientific research or enhancement, the importation of pregnant, lactating, or either unweaned or less than 8 months old marine mammals, at the time of taking or transfer/transport, is prohibited under Section 102 of the MMPA, unless such importation is necessary for the protection or welfare of the marine mammal. Applicants must submit this information if they propose to import such marine mammals under the authority of a public display permit.

E-G. **Foreign take consistency:** An applicant proposing to import a live animal for public display must demonstrate that the manner of taking in the foreign country was consistent with what would have been allowed in the United States or on the high seas under the jurisdiction of the MMPA, to ensure that animals are taken humanely as required by the MMPA.

H. **Replacement takes:** The applicant must state whether the import/export proposed will result in replacement takes, or whether the proposed import/export will result in an increased demand or pressure to take marine mammals or marine mammal parts. This information is necessary for NOAA Fisheries to consider cumulative effects and indirect impacts of permit issuance, and to avoid the creation of circumstances leading to an unauthorized taking of marine mammals.

I. Import for the protection or welfare...: The applicant must describe the circumstances that indicate emergency importation is necessary. NOAA Fisheries needs this information to determine whether the exceptions in Section 102(b) of the MMPA would be appropriate.

VI. **Exports**

A permit is not required for the export of marine mammals for public display purposes. However, these exports must meet standards comparable to those applicable to the transport of marine mammals between U.S. facilities (16 U.S.C. 1374 et seq.). These requirements are provided to applicants for information.

VII. **General Requirements**

This section requests that the applicant submit information necessary to address the requirements of Section 104(c)(2)(A) of the MMPA which limits the issuance of public display permits to applicants who (1) are licensed or registered under the AWA by the Department of Agriculture's APHIS; (2) offer a program for education or conservation purposes that is based on professionally recognized standards of the public display industry, and (3) maintain a facility that is open to the public on a regularly scheduled basis with access not restricted other than by an admission fee. Without the submission of this information, NOAA Fisheries would be unable to determine whether the applicant meets the three issuance criteria.

**GENERAL AUTHORIZATION (GA) FOR
LEVEL B HARASSMENT FOR SCIENTIFIC RESEARCH 50 CFR 216.45.**

To implement Section 104(c)(3)(C) of the MMPA, NOAA Fisheries published an interim final rule on October 3, 1994 for the GA for Level B harassment [Attachment 4]. A Letter of Intent, submitted at least 60 days before research is to begin, must contain the information specified at 50 CFR 216.45(b)(2) including the name, address, telephone number, qualifications, and experience of the applicant (i.e., principal investigator) and any co-investigator. Curricula vitae must be provided for each, including a list of publications by such investigator relevant to the objectives, methodology, or other aspects of the proposed research. Each Letter of Intent must be signed, dated, and include the certification statement specified at 216.45(b)(3).

Additionally, each Letter of Intent must include brief statements responsive to the information requirements of section 104(c)(3)(C) of the MMPA: The species or stocks of marine mammals (common and scientific names) that are the subject of the scientific research and any other species or stock of marine mammals that may be harassed during the conduct of the research; the geographic location(s) in which the research is to be conducted, e.g., geographic name or latitude/longitude; the period(s) of time over which the research will be conducted (up to 5 years), including the field season(s) for the research, if applicable; the purpose of the research, including a description of how the proposed research qualifies as *bona fide* research; and the methods to be used to conduct the research.

**APPLICATION INSTRUCTIONS FOR PHOTOGRAPHY
50 CFR 216.42 reserved; not codified.**

Section 104(c)(6) of the MMPA as amended by P.L. 103-238 establishes photography permits for educational and commercial purposes involving marine mammals in the wild that are limited to Level B harassment. Regulations implementing these provisions have not been developed yet. Applicants are currently provided interim instructions based on statutory language.

**REPORTS.
50 CFR 216.27, 216.38, 216.45, and 222.301(h).**

Section 104(c) of the MMPA requires "...any person authorized to take or import a marine mammal for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock [to] furnish to the Secretary a report on all activities carried out by him pursuant to that authority." The provisions promulgated at 50 CFR 216.38 require all permit holders to submit reports in accordance with the requirements established in their permits. Proposed reporting requirements for the GA are specifically addressed in 50 CFR 216.45.

Reports are of several types and may be submitted annually or on occasion. For scientific research and enhancement permits, the annual report is a summary of all research and enhancement activities conducted during the year (50 CFR 216.38). This report can vary from a simple list of activities to a detailed report of the research including an analysis of results.

Numbers of marine mammals taken must be included in the reports. Often, researchers must supply an annual report to a third party as part of a grant or contract. Such reports can be used to fulfill MMPA/ESA requirements, thereby reducing the burden on permit holders. Annual reports are necessary for NOAA Fisheries to determine that the permit holder is abiding by the conditions of the permit, and whether a modification or amendment to the permit is necessary as well as to track numbers of marine mammals taken. Final reports are necessary for scientific research and enhancement permits, and those under the General Authorization to summarize the research objectives and results, to provide information concerning whether the permitted research or enhancement activities met stated objectives and an indication of where and when the research findings will be published or otherwise made available to the public or scientific community.

Marine Mammal Transport Notification - Under the 1994 Amendments, a special exception permit or other NOAA Fisheries authorization is no longer required for the transport, transfer, or export of marine mammals for purposes of public display. Provided the intended recipient meets the three public display criteria specified at Section 104(c)(2) of the MMPA, a holder of captive marine mammals for public display purposes need only provide NOAA Fisheries with notification at least 15 days in advance of the proposed transport, export, sale or other transfer of custody. To ensure compliance with this statutory requirement and in conjunction with ongoing efforts to reduce and streamline reporting requirements, NOAA Fisheries prepared a Marine Mammal Transport Notification (MMTN) [Attachment 7]. Sections IV. and V. of the transport notification require the recipient to certify compliance with the three criteria at Section 104(c) of the MMPA, and attaching supplementary documentation, if needed, or if previously submitted, checking the appropriate boxes. The current holder (shipper) must identify the marine mammals to be transported and certify the accuracy of the information provided. The notification has been designed so that holders of marine mammals may use it also to notify NOAA Fisheries of exports for the purposes of public display.

Marine Mammal Data Sheet - Section 104(c)(10) of the MMPA, as amended, directs the Secretary to establish and maintain an inventory of captive marine mammals and their progeny. Public display permit holders and others maintaining captive marine mammals must notify NOAA Fisheries within 30 days of captive births and deaths along with other inventory changes/disposition, i.e., transfer, sales. NOAA Fisheries maintains an automated Permit Program Information Management System (PPIMS) database of permit tracking information, as well as inventory information for over 7000 captive marine mammal including identification numbers, locations, species, birth dates and other basic data. Although NOAA Fisheries has maintained an inventory of captive marine mammals since 1972 as part of the terms and conditions of special exception permits, this more recent statutory requirement requires this information regardless of whether the reporting entity is a permit holder.

To simplify compliance with the statutory requirement and to ensure consistency of the submissions, NOAA Fisheries has developed a Marine Mammal Data Sheet (MMDS) [Attachment 8] to be used alone to report changes in the holder's inventory, i.e., births and deaths. And, it may be attached to the MMTN to identify marine mammals that the holder proposes to transport, export, sell or otherwise transfer. The information requested on the

MMDS are the items specified in Section 104(c)(10) of the MMPA and also correspond to the database fields in the PPIMS inventory system.

Once the initial inventory information for Section II. of the MMDS has been provided, it does not change. Regardless of the number of transports or transfers of a specific marine mammal, the database generates an updated MMDS thereby providing the new holder with an accurate MMDS to be used to report future updates. Section IV. (Disposition) of the MMDS remains blank until the holder reports a sale, export, transfer, death or release of the marine mammal identified on the MMDS. When the holder uses the MMDS, it eliminates the need for the respondent to prepare a formal letter and ensures accurate animal identification. Used together, the MMTN and the MMDS should simplify and expedite the notification requirements and inventory updates.

Periodically, NOAA Fisheries submits to each public display permit holder and to others maintaining captive marine mammals, a Marine Mammal Inventory Report-Summary by Holder and Species (MMIRS) listing the marine mammals in their collection [Attachment 9] together with a Person/Holder/Facility Sheet (PHF Sheet) to update, as necessary. The PHF Sheet [Attachment 10] is computer-generated and contains the name, address and telephone number of the individual who is responsible for and has the signatory authority for marine mammal custody decisions. The primary contact is the registrar or other person responsible for maintaining the marine mammal inventory records at the facility. The return of an updated MMIRS and/or PHF Sheet by permit holders, satisfies the reporting requirement.

Special reports include those required for the initial importation, transfer, export or re-import of marine mammal parts (50 CFR 216.37); live captures; lethal take; and others including the reporting of an unexpected event that may pose a significant adverse effect upon the health and welfare of the marine mammal species or the marine ecosystem. Also, a description of the disposition of any marine mammal part including identification as indicated in 50 CFR 216.37(a)(4) and manner of disposition.

Permit requirements implemented under 50 CFR 216. mandate that permit holders who hold live animals also update marine mammal inventory information within 30 days whenever a take, birth or death occurs within their facility or a facility holding a marine mammal for them. This information is needed by NOAA Fisheries to determine the status of public holdings of marine mammals. Inventory and update reports provide NOAA Fisheries with information that is frequently requested and used, especially to respond to Congressional (annual report to Congress) and general public inquiries, and to monitor compliance with take requests. Essentially, the U.S. Government is responsible for ensuring the health and welfare of these protected species and needs to know that these animals are being handled appropriately. Facilities permitted to hold marine mammals are custodians of the marine mammals; subject to the public interest of the citizens of the United States.

ATTACHMENT 5

Interim Application Requirements for Commercial and Educational Photography Permit

50 CFR 216.42 reserved for photography provisions not codified; section 104(c)(6) of the MMPA as amended by P.L. 103-238.

The Application instructions for commercial and education photography applicants reflect the 1994 amendments to the MMPA. Section 104(c)(6) of the MMPA was amended to allow level B harassment of marine mammals while being photographed.

1. The date of the application.
2. The identity and qualifications of the applicant and any other persons to be directly involved in the taking. An address and phone number for the applicant is required. Describe the qualifications and experience of the principal photographers, consultants with experience with marine mammals, and their designated assistants relative to the aspects of the activities proposed to be conducted by these individuals. Curriculum vitae or resumes for each individual to be authorized for photographic activities should be provided, including a list of accomplishments and experience relevant to the proposed activity.
3. The species of stocks of marine mammals which may be harassed. The description must include the species name (common and scientific names) and number of each to be taken. A summary of the best available information concerning the status of the affected species or stock(s) and factors known to be affecting their status. Some of this information can be found in the on-line NMFS stock assessment reports at:
http://www.nmfs.noaa.gov/pr/PR2/Stock_Assessment_Program/sars.html

Sections 1-3 above correspond to those in the Applications Instructions for Scientific Research and public permits. The Certification in section 8 is the same as that in the SR/EN and PD.

4. The geographic area(s) in which the photography will be conducted.
5. The time periods over which the photography will be conducted, including field seasons if that is appropriate, and also the duration of the larger photography project.

4&5. Location of take is necessary for NOAA Fisheries to ensure that the take is not occurring in an area designated as critical habitat or a sanctuary for marine species. Also, are normally issued for a 5-year period which provides a basis to determine whether it is likely that the objectives will be met during the time allotted and with the available resources. Section 104(b)(1)(C) requires that permits specify the period during which the permit is valid and the location of take.

6. The rationale for such activity, and the type of photography to be conducted, and how the products are expected to be made available to the public.

Without a rationale for the application, NMFS would be unaware of the applicant's need for a permit; without the information, NMFS, the Marine Mammal Commission, and public interests would be unable to determine whether the taking is necessary, humane and in the best interest of both protected species and for the public at large. NMFS's ability to issue permits without receiving adequate information from applicants is questionable.

7. Methods to be used to conduct the photography and a justification that such activities will result in only taking by Level B Harassment of a marine mammal(s). A description of the effects of the proposed taking, or otherwise prohibited activity, by itself or in combination with other known or suspected taking, importation, export, or otherwise prohibited activities.

Section 104(b) of the MMPA requires permits to specify the number and kind of marine mammals authorized to be taken, the manner and location of the taking, and the period of validity for the permit. Also, under Section 104(c)(1) of the MMPA requires permits to specify the methods of capture, supervision, care and transportation and that the taking is consistent with the purposes of the MMPA.

8. The application must be signed, dated and certified by the applicant as follows:

"I hereby certify that the foregoing information is complete, true and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and regulations (50 CFR Part 216). I also understand that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to the penalties provided under the Marine Mammal Protection Act of 1972, or the Fur Seal Act of 1966, whichever are applicable."

Signature of Applicant and Date of Signature

Typed or Printed Name of Applicant

Title of Applicant

Species List: Please check list for scientific names and verification that the intended target species is not listed as threatened and endangered under the Marine Mammal Protection Act. If the species is listed as threatened or endangered, the Commercial/Educational Photography Permit is not authorized. Please contact the Office of Protected Resources for more information. The species list can be found on-line at:

http://www.nmfs.noaa.gov/prot_res

Interim Application Requirements for Commercial and Educational Photography Permit

50 CFR 216.42 reserved for photography provisions not codified; section 104(c)(6) of the MMPA as amended by P.L. 103-238.

The Application instructions for commercial and education photography applicants reflect the 1994 amendments to the MMPA. Section 104(c)(6) of the MMPA was amended to allow level B harassment of marine mammals while being photographed.

- I. The date of the application.
- II. The identity and qualifications of the applicant and any other persons to be directly involved in the taking. An address and phone number for the applicant is required. Describe the qualifications and experience of the principal photographers, consultants with experience with marine mammals, and their designated assistants relative to the aspects of the activities proposed to be conducted by these individuals. Curriculum vitae or resumes for each individual to be authorized for photographic activities should be provided, including a list of accomplishments and experience relevant to the proposed activity.
- III. The species of stocks of marine mammals which may be harassed. The description must include the species name (common and scientific names) and number of each to be taken. A summary of the best available information concerning the status of the affected species or stock(s) and factors known to be affecting their status. Some of this information can be found in the on-line NMFS stock assessment reports at:

http://www.nmfs.noaa.gov/pr/PR2/Stock_Assessment_Program/sars.html

Sections 1-3 above correspond to those in the Applications Instructions for Scientific Research and public permits. The Certification in section 8 is the same as that in the SR/EN and PD.

- IV. The geographic area(s) in which the photography will be conducted.
 - V. The time periods over which the photography will be conducted, including field seasons if that is appropriate, and also the duration of the larger photography project.
- 4&5. Location of take is necessary for NOAA Fisheries to ensure that the take is not occurring in an area designated as critical habitat or a sanctuary for marine species. Also, are normally issued for a 5-year period which provides a basis to determine whether it is likely that the objectives will be met during the time allotted and with the available resources. Section 104(b)(1)(C) requires that permits specify the period during which the permit is valid and the location of take.
- VI. The rationale for such activity, and the type of photography to be conducted, and how the products are expected to be made available to the public.

Without a rationale for the application, NMFS would be unaware of the applicant's need for a permit; without the information, NMFS, the Marine Mammal Commission, and public interests would be unable to determine whether the taking is necessary, humane and in the best interest of both protected species and for the public at large. NMFS's ability to issue permits without receiving adequate information from applicants is questionable.

VII. Methods to be used to conduct the photography and a justification that such activities will result in only taking by Level B Harassment of a marine mammal(s). A description of the effects of the proposed taking, or otherwise prohibited activity, by itself or in combination with other known or suspected taking, importation, export, or otherwise prohibited activities.

Section 104(b) of the MMPA requires permits to specify the number and kind of marine mammals authorized to be taken, the manner and location of the taking, and the period of validity for the permit. Also, under Section 104(c)(1) of the MMPA requires permits to specify the methods of capture, supervision, care and transportation and that the taking is consistent with the purposes of the MMPA. In addition, it requires that no permit shall authorize the killing of a marine mammal unless the applicant demonstrates that a nonlethal method for carrying out the research is not feasible.

VIII. The application must be signed, dated and certified by the applicant as follows:

"I hereby certify that the foregoing information is complete, true and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and regulations (50 CFR Part 216). I also understand that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to the penalties provided under the Marine Mammal Protection Act of 1972, or the Fur Seal Act of 1966, whichever are applicable."

Signature of Applicant and Date of Signature

Typed or Printed Name of Applicant

Title of Applicant

Species List: Please check list for scientific names and verification that the intended target species is not listed as threatened and endangered under the Marine Mammal Protection Act. If the species is listed as threatened or endangered, the Commercial/Educational Photography Permit is not authorized.

APPLICATION INSTRUCTIONS
AND SUPPLEMENTAL INFORMATION
FOR
PERMITS
UNDER THE
MARINE MAMMAL PROTECTION ACT
FUR SEAL ACT
FOR
PUBLIC DISPLAY

DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Permits Division, F/PR1
Office of Protected Resources
1315 East-West Highway, Room 13705
Silver Spring, Maryland 20910-3226
Tel: (301) 713-2289
Fax: (301) 713-0376

website: http://www.nmfs.gov/prot_res/prot_res.html

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15 CFR Part 902; 15 CFR Parts 216 and 222

Federal Register Notice 59 FR 50900 (Educational Standards)

Excerpts from the Marine Mammal Protection Act

Introduction

The National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) share responsibilities under the Marine Mammal Protection Act of 1972 (MMPA) and the Endangered Species Act of 1973 (ESA) for the management of marine mammals in the United States. NMFS has the responsibility for all cetaceans and pinnipeds (except walrus) under the two acts. NMFS has the sole responsibility under the Fur Seal Act of 1966 (FSA). A full list of the marine mammal species under the jurisdiction of NMFS is included in the supplemental information portion of these instructions. The list shows the status of each animal under the ESA and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Animals for which the Fish and Wildlife Service share responsibility or has sole responsibility are annotated on the list.

Under these statutes and implementing regulations, NMFS may issue permits for the taking², importing, and exporting of marine mammals, including threatened or endangered species, for scientific purposes or to enhance the propagation or survival of such species (50 CFR Parts 216 and 217-222); and the taking, importing, or exporting of marine mammals for purposes of scientific research, public display, enhancing the survival or recovery of a species or stock, or the taking of marine mammals by no more than Level B harassment for photography for commercial or educational purposes (50 CFR Part 216). Permits to take fur seals are issued under the MMPA and the FSA.

Permits are not required to export marine mammals and/or marine mammal parts for public display if the marine mammals to be exported are legally held for public display in the U.S. prior to exportation. Permits are required, though, to export marine mammals if the marine mammal is collected from the wild in the U.S. for the sole purpose of export.

¹ Under the MMPA, the term “take” is defined as: *To harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.*

The 1994 Amendments to the MMPA statutorily define the term “harassment” as: *Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing a disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).*

Under the ESA, the term “take” is defined as: *To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.*

Activities For Which These Instructions Apply

These instructions provide the format for preparing public display permits to take marine mammals, under the jurisdiction of NMFS. These instructions also may apply to marine mammals under the jurisdiction of USFWS, as well as threatened or endangered sea turtles that, in rare instances, may be incidentally affected during the course of a capture of a marine mammal.

Application instructions for marine mammals under NMFS jurisdiction can be obtained by calling the Permit Division of the Office of Protected Resources (301/713-2289) or by accessing the NMFS website: http://www.nmfs.gov/prot_res/prot_res.html. Application instructions for fish and sea turtles (in the marine environment) can be obtained through the Endangered Species Division of the Office of Protected Resources (301/713-1401). Application instructions for sea turtles (on land) and marine mammal species under USFWS jurisdiction can be obtained by calling the Office of Management Authority, USFWS (1-800/358-2104).

These instructions do **not** apply to the following types of permits/authorizations:

- Scientific Research/Enhancement under the MMPA;
- Commercial/Educational photography under the MMPA; and
- Public Display permits under the MMPA for marine mammals under USFWS jurisdiction (sea and marine otters, walrus, manatees, dugongs, and polar bears).

Guidelines for Using These Instructions

Give Complete Information

An application **must** be complete before it will be forwarded to reviewers and before a Notice of Receipt is published in the Federal Register. Incomplete applications will not be processed; instead, additional information will be requested or the application will be returned. Therefore, please provide complete and specific information. When a question does not apply, do not overlook the section, but indicate Not Applicable (N/A). A brief explanation as to why the category is not applicable will expedite processing.

NMFS tries to process all applications in a timely manner. Nevertheless, processing of a **complete** application usually requires 90 days from submission to final action and includes a 30-day public comment period.

Applicants Who Have Previously Been Issued a Permit

If an applicant is or has been a permit holder, the new application will not be processed until all reports required to date under such permits have been submitted.

Permit Amendments

Requests for amendments to permits should address all applicable sections of these instructions, including a detailed description of the proposed changes. Amendment requests involving an increase in number or changes of location or species are subject to a 30-day public review and are granted or denied at the discretion of the Director, Office of Protected Resources. Minor changes not involving numbers, species, or locations may be authorized at the discretion of the Director without public review.

Permit Fees

Section 104(g) of the MMPA provides the authority to establish and charge a reasonable permit fee; however, there is no fee at this time.

INSTRUCTIONS

PLEASE READ the INTRODUCTION, the INSTRUCTIONS, the SUPPLEMENTAL INFORMATION, and applicable sections of the ATTACHED PERMIT REGULATIONS BEFORE preparing your application. Reading these sections FIRST will save you time and help you avoid common errors. Please pay particular attention to the attached Permit Regulations (15 CFR Part 902; 50 CFR Parts 216 and 222) as these regulations include both permit issuance criteria and requirements, information that you should find most useful in preparing a complete application.

IMPORTANT

Information should be presented in the following categories. If a section or question does not apply, indicate Not Applicable (N/A) with a brief, but complete, explanation as to why.

I. Title of the Application

Please select one of the titles below as appropriate.

- A. Application for a Permit for Public Display under the Marine Mammal Protection Act.
- B. Application for a Permit for Public Display under the Marine Mammal Protection Act and the Fur Seal Act³.

II. Date of the Application

III. Applicant

State complete name, address, telephone number, and institutional affiliation, if any, of the Applicant. If the Applicant is a partnership or corporation describe the business relationship. In addition, state complete name, address, telephone number, and institutional affiliation of the Holder, Primary Contact, and Responsible Official (see attached glossary for complete definitions of these terms).

² – Please review the information concerning Northern fur seals provided in Supplemental Information.

IV. Description of the Marine Mammals and the Proposed Activity

A. Statement of Work

Provide a brief summary (200 words or less) of the proposed work to be conducted including the manner in which such activity involves the taking, importing, or exporting of marine mammals or marine mammal parts.

B. Summary of Marine Mammals to be Taken, Imported, or Exported

1. List the species (common and scientific names) and, as applicable, the subspecies or population group that may be taken, imported, or exported. In the case of a wild capture, list any species that may be incidentally taken during the course of collection activities (*i.e.*, non-target species), including non-marine mammal species such as sea turtles.
2. Where the proposed activity involves marine mammal parts, list the parts that will be taken or imported.
3. Provide a summary of the best available information concerning the status of the affected species or stocks and factors affecting this status (cite sources).

C. Description of the Proposed Activity

1. Give the dates and locations of the proposed taking, import, or export. Dates and locations should be identified as specifically as possible, including ports of entry.
2. State the proposed duration of the permit.
3. Indicate the types of taking involved, (e.g. capture, import, etc.). Clearly indicate the number, estimated or known age, size, sex, and reproductive condition of the marine mammals that will be taken, imported, or exported. Permit holders may not capture or import a marine mammal that is pregnant, lactating, or either unweaned or less than 8 months old, whichever comes later, unless the Office Director determines that such capture or importation is necessary for the protection and welfare of the animal.

D. If Marine Mammals are to be Collected from the Wild

1. List the names, if other than the Applicant, and qualifications of the personnel who will capture the animals.

- Provide a written certification from the attending veterinarian responsible for the animals during and immediately after capture that the methods of capture and post-capture care will be adequate to ensure the well-being of the animals.
3. Give a detailed description of the manner of capture, including gear to be used. Describe the techniques and equipment to be used to approach, capture, and restrain; for example, indicate: (a) any drugs or other substances to be used, including the name, dosage, and method of administration; and/or (b) the method of capture and restraint.
 4. Describe the pen, tank, container, cage, cradle, or other device used post-capture and thereafter during transportation to the initial holding facility.
 5. Describe the mode of transportation, special care during transport, and the length of time required for the transfer from the capture site to the initial holding facility.
 6. Provide any alternatives to the proposed manner of taking or importation, and state why the proposed method is considered humane.
 7. In addition, if a captive stock of the species concerned is available, the applicant must explain why the animals cannot be obtained from such captive stock.
 9. If an animal may be determined to be unsuitable for public display, give details regarding the specific protocol for return to the wild.

E. Taking of Marine Mammal Parts

If the activity involves the taking, importing, or exporting of marine mammal parts obtained from or following the death of a captive marine mammal, provide a description of the parts including the NMFS Marine Mammal Inventory Identification Number assigned to the subject captive marine mammal and located on the specimen; the original source of the parts (e.g., beached or stranded animals, captive animals, animals obtained from the wild, imported, or unknown); the location and date of original collection; and the name/identity of the collector. A permit is not required for the export of marine mammal parts for public display purposes. However, such exports must adhere to the above mentioned regulations as set forth in 50 CFR Part 216.37.

F. Effects of the Proposed Activity

Describe the effects of the proposed taking, import, or export by itself or in combination with other known or suspected taking, import, or export on: (a) the individual animals concerned; (b) the relevant species or stock; (c) the human environment; and (d) the marine ecosystem. The description must be sufficiently detailed to enable the preparation of any documentation required under the National Environmental Protection

Act (e.g., an environmental assessment (EA), environmental impact statement (EIS), or documentation to support a determination that the conduct of the activity is categorically excluded from the requirement to prepare an EA or EIS).

V. Import Requirements

- A. Provide the names and qualifications of the personnel who will accompany the animals during import.
- B. Describe the pen, tank, container, cage, cradle or other device used during import, and thereafter during transportation to the initial holding facility.
- C. Describe the mode of transportation, special care during transport, and the length of time required for the transfer from the foreign facility to the initial holding facility in the United States.
- D. Submit a written certification from the attending veterinarian responsible for the animals during import that the methods of import and post-import care, will be adequate to ensure the well-being of the animals.
- E. Name the country of exportation (i.e., the country from which the marine mammal is to be imported into the United States) and the country of origin (country from which the animal was originally taken from the wild or where born in captivity) if different from the country of exportation.
- F. Describe how the marine mammals were taken in the country of origin. Permit holders may not capture or import a marine mammal that is pregnant, lactating, or either unweaned or less than 8 months old, whichever comes later, unless the Office Director determines that such capture or importation is necessary for the protection and welfare of the animal. If the marine mammal was subsequently exported to a country different from the country of origin, cite the dates, the manner and circumstances under which it was imported into the country of exportation.
- G. Submit a statement and, to the extent practicable, documentation concerning whether the marine mammal to be imported was captured and is presently being held in compliance with the laws of the country of exportation.
- H. Provide a statement whether taking of marine mammals will occur in order to replace the marine mammals to be imported, or whether the proposed import will result in an increased demand for marine mammals.
- I. If the import is necessary for the protection or welfare of the marine mammals, discuss the circumstances involved and any alternatives considered.

VI. Export Requirements

A permit is not required for the export of marine mammals for public display purposes if the marine mammals to be exported are held legally for public display in the U.S. However, such exports must meet standards comparable to those applicable to the transport of marine mammals between U.S. facilities according to the MMPA. These requirements are provided for information.

- A. Foreign applicants that intend only to export from the U.S. marine mammals for the purposes of public display must meet the following requirements:
 - 1. Offer an education or conservation program comparable to one that is based on professionally recognized standards of the U.S. public display community.
 - 2. Meet standards comparable to those a person in the U.S. must meet to be issued a license under the Animal Welfare Act (7 U.S.C. 2131 et seq.).
- III. Maintain facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis with access that is not limited or restricted other than charging an admission fee.
- II. The appropriate agency of the foreign government (e.g., the CITES management authority of the government) must submit a statement certifying that:
 - 1. The information submitted concerning the foreign facility is accurate.
 - 2. The laws and regulation of the government involved permit that government's enforcement of requirements of the U.S. Marine Mammal Protection Act and the Animal Welfare Act, and that government will enforce such requirements.
 - 3. If it is determined that the foreign facility involved has acted in a manner inconsistent with MMPA or the AWA, that would be applicable if the foreign facility were a U.S. facility, the government concerned will afford comity to an enforcement decision that may be made by the U.S. National Marine Fisheries Service, including seizure or arrangements for other disposition of marine mammals exported from the U.S. and the progeny of such marine mammals and the recovery of expenses for such seizure or other disposition.

VII. General Requirements for Public Display

- A. Names and addresses of the facility(ies) where the marine mammals to be imported or captured will be maintained. Indicate hours of operation and cost of admission. (Attach copies of facility brochures or public notices advertising this information, if available.)
- B. License (attach a copy) or registration number issued under the Animal Welfare Act by the Department of Agriculture's Animal Plant and Health Inspection Service (APHIS).
- C. Specify the professionally recognized standards of the public display community upon which the education or conservation program offered by the applicant is based⁴, and provide a general description of the program offered for reference purposes.

VIII. Previous Permits

- 1. If issued previous permits for the taking, import, or export of marine mammals and a final report has not yet been submitted, ensure that all required reports to date have been submitted.
- 2. If applicable, provide the names and addresses of cooperating institutions and individuals.
- 3. Indicate whether other Federal and State permits (*e.g.*, USFWS, NOAA National Marine Sanctuaries, the Army Corps of Engineers) are being sought in connection with the requested permit.

⁴ - Standards for education and conservation programs developed and endorsed by the American Association of Zoos and Aquariums (AZA) and the Alliance of Marine Mammal Parks and Aquariums (Alliance), representing approximately 60% of the U.S. marine mammal public display community, were published in the Federal Register on October 6, 1994 (59 FR 50900). (A copy of this notice is attached in the Appendices.) If applicable, these AZA/Alliance standards may be referenced as the standards on which your education or conservation program is based. However, please note that while these professionally recognized standards have been provided by the AZA and Alliance, they represent only one example of such standards. Other professionally recognized standards of the public display community may differ from this example. If your education or conservation program is based upon different professionally recognized standards of the public display community, please provide a copy of these standards. NMFS maintains a record of these standards for reference purposes only.

VIII. Certification and Signature

The following Certification, followed by the Signature, Name, and Title of the Applicant or responsible party, must be submitted as the concluding section of the application.

"I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under one or more of the following statutes and the regulations promulgated thereunder, as indicated in section I. of this application:

The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) and regulations (50 CFR Part 216); and/or

The Fur Seal Act of 1966 (16 U.S.C. 1151 et seq.).

I also understand that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties provided under the Marine Mammal Protection Act of 1972, or the Fur Seal Act of 1966, whichever are applicable."

- Signature of Applicant and Date of Signature
- Typed or Printed Name of Applicant
- Title of Applicant

WHERE TO SEND APPLICATIONS

[In addition to the hard copies of the application, submission of an electronic version on disk in either WordPerfect or Word will facilitate processing.]

Submit a signed original and two signed copies of the completed application to:

Chief, Permits Division, F/PR1
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway, Room 13705
Silver Spring, Maryland 20910-3226

Privacy Act Statement

All permit documentation including the application, permit and amendments, reports, and inventory information required herein, is considered public information and as such, is subject to the Freedom of Information Act (FOIA). All responses to the collection of information are required to obtain a permit.

Public Reporting Burden

Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, search existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver spring, MD 20910. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless the collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

SUPPLEMENTAL INFORMATION

[Public display]

CITES Import/Export Permits:

United States regulations require that imports or exports of wildlife listed on the appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) be accompanied by the proper CITES permit or documentation. This is in addition to the required permits under the ESA and, as applicable, the MMPA. The U.S. agency responsible for implementing CITES is the Office of Management Authority, U.S. Fish and Wildlife Service (1-800/358-2104), <http://permits.fws.gov/>. The CITES status of endangered species and marine mammals under NMFS jurisdiction is indicated on the attached species list. Please note that all cetaceans are included on either Appendix I or II.

Animal Welfare Act (AWA):

The U.S. Department of Agriculture's Animal and Plant Health Inspection Service (USDA/APHIS), has responsibility under the AWA for captive warm-blooded animals, including marine mammals, and has established regulations and standards for animal care, including "Specifications for the Humane Handling, Care, Treatment, and Transportation of Marine Mammals (9 CFR Ch 1, Subpart E)." Most U.S. facilities maintaining marine mammals are required to be licensed or registered by APHIS. For information concerning the AWA and its requirements, and the name and address of the Veterinarian in Charge in the state concerned, contact the Regulatory Enforcement and Animal Care staff, USDA/APHIS, (301/734-7833) or <http://www.aphis.usda.gov/>.

Beached/Stranded Animals:

NMFS encourages the use of healthy rehabilitated beached/stranded animals in lieu of taking animals from wild populations. Applicants must justify the need for capturing animals from the wild rather than obtaining them from rehabilitated beached/stranded stock, particularly in the case of U.S. coastal pinnipeds, such as California sea lions (*Zalophus californianus*). For information on the availability of these animals contact the appropriate NMFS Regional Office (see attached list).

Northern fur seals (Callorhinus ursinus):

The Northern fur seal has been designated as depleted by the National Marine Fisheries Service (NMFS). Section 102(b)(3) of the Marine Mammal Protection Act (MMPA) prohibits the taking of a depleted species except for scientific research or enhancement.

Atlantic bottlenose dolphin (Tursiops truncatus):

The taking of bottlenose dolphins in the Eastern United States is limited to certain areas, and quotas have been established limiting the number which may be taken each year. Permit Holders are required to consult with the Southeast Regional Director at least one week prior to collection

for approval of the specific dates and locations. The Regional Director will coordinate the Permit Holder's collection activities with other collections and with research activities being conducted in the proposed collection area so as to avoid possible interference and cumulative adverse impacts on the subject population.

PERSON/HOLDER/FACILITY SHEET

PHF # _____ (NMFS use Only)

OMB No. 0648-0084; Exp. 7/31/ 03

I. Person/Holder/Facility - Specific

Active: _____

☐ Permit/GA Applicant ☐ Permit/GA Holder ☐ Animal Holder ☐ Facility

Name: _____

Address: _____

City: _____ State: _____ Zip: _____ Country: _____

Phone: _____ Fax: _____

E-Mail: _____

II. Responsible Official

Name: _____

Title: _____

Address: _____

City: _____ State: _____ Zip: _____ Country: _____

Phone: _____ Fax: _____

E-Mail: _____

III. Primary Contact

Name: _____

Title: _____

Address: _____

City: _____ State: _____ Zip: _____ Country: _____

Phone: _____ Fax: _____

E-Mail: _____

PERSON/HOLDER/FACILITY SHEET INSTRUCTIONS

NOAA FORM 89-880

The Marine Mammal Protection Act of 1972, as amended (MMPA) (16 U.S.C. 1361 et seq.) requires that persons holding marine mammals submit certain information to the National Marine Fisheries Service (NMFS). Under the MMPA NMFS is required to maintain an inventory of all marine mammals held for public display purposes and scientific research (i.e., all marine mammals held captive except for those in captivity before December 21, 1972). In order to maintain that inventory, contact information for permit holders, facilities, and responsible individuals is needed by the NMFS. In addition to receiving information about marine mammal inventories NMFS also provides periodic updates back to the holders and facilities so that the inventories can be verified. Use of this form will ensure that MMPA-required information is submitted in a consistent manner, that the NMFS inventory of captive marine mammals is accurate and up-to-date, and that holders and facilities can verify their inventories on a regular basis.

1. Please read all of the instructions before filling out this form. It is a computer generated form and will contain basic contact information for the facility and holder when complete.
2. If you are receiving this form for the first time, or if it is being sent to you for updating, please fill out the appropriate blank sections (I, II, and/or III) in red.
3. The **Responsible Official** is the individual who is responsible for and who has the signatory authority for marine mammal custody decisions. The **Primary Contact** is the registrar or other person responsible for maintaining the marine mammal inventory records at the facility. The **Responsible Official** and the **Primary Contact** can be the same person, but should be noted in both Sections II and III. Please mail the this form to the address listed below.
4. All documentation required for this information collection is subject to the Freedom of Information Act (FOIA). No assurance of confidentiality is provided.

QUESTIONS? If you need assistance completing this form please contact the Permits Division at (301-713-2289) or write to us at:

Permits Division - F/PR1

**Office of Protected Resources
National Marine Fisheries Service
1315 East West Highway, #13706
Silver Spring, MD 20910**

**Or by facsimile
at (301) 713-0376**

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, search existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information to complete this form. Send comments regarding this burden estimate or any other aspect of this collection of information including suggestions for reducing this burden, to the Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless the collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

MARINE MAMMAL TRANSFER/TRANSPORT NOTIFICATION

OMB No. 0648-0084:Exp. / /

I. GENERAL

Transfer/transport notifications must be RECEIVED at least 15 days before the date of transfer/transport. Only the marine mammals identified on the Marine Mammal Data Sheets ATTACHED to this notice may be transferred/transported. A new Marine Mammal Transport Notification should be submitted if transfer/transport does not occur within 60 days of the date the notice is received by the National Marine Fisheries Service (NMFS). Within 30 days following the transfer/transport the Receiver should submit updated Marine Mammal Data Sheets for the marine mammals transferred/transported.

Sections II through V must be completed for the transfer/transport of marine mammals for purposes of public display. Transfer/transport of marine mammals for public display purposes requires notification only; however, to ensure this right is invoked in accordance with the requirements of the Marine Mammal Protection Act of 1972 (MMPA), as amended (16 U.S.C. 1361 et seq.), Shipper and Receiver must certify the Receiver's compliance with the three public display criteria in Section IV. See attached NOTES¹ concerning the transfer/transport of marine mammals associated with imports, exports, captures from the wild, transfer/transport between foreign facilities, and obtaining or retaining marine mammals from rehabilitated beached and stranded stock for which a determination has been made that their return to their natural habitat is not feasible.

Sections II, III and IV must be completed for the transfer/transport of marine mammals for purposes of scientific research or enhancing the survival or recovery of a species or stock (enhancement). Persons intending to obtain marine mammals for scientific or enhancement purposes must first be issued a permit under section 104(c) of the MMPA.

II. SHIPPER

On ____/____/____ (planned transfer/transport date²), ____ (Number) animals identified on ATTACHED Marine Mammal Data Sheets and presently held by _____ at _____
Shipper³ Name of Facility (if different than Shipper)⁵
will be transferred/transported to _____ at _____
Receiver⁶ Name of Facility (if different than Receiver)

Please check here if this is a temporary transfer/transport ☐

III. RECEIVER

_____ is receiving custody of the marine mammal(s) identified on the ATTACHED Marine Mammal Data Sheets and these marine mammals will be held for the purpose of (Check all that apply):

- ☐ Public Display (**Complete Section IV**)
☐ Scientific Research (Permit Required) - Permit No. _____
☐ Enhancement (Permit Required) - Permit No. _____

IV. TRANSFER/TRANSPORT FOR PURPOSES OF PUBLIC DISPLAY

The Receiver listed in Section III (**Check at least one box for each item below**):

- 1) Offers an education or conservation program that is based on professionally recognized standards of the public display community⁶.

The standards on which the receiving person/facility's education/conservation program is based are:

- ☐ AZA standards⁶, ☐ Alliance standards⁶, or ☐ ATTACHED;

- 2) Is registered or holds an exhibitors license issued under the Animal Welfare Act (7 U.S.C. 2131 et seq.)
[If receiver is a foreign facility, check this box ☐ and see attached Export requirements.]

USDA License/Registration Number _____ A copy of the USDA License/Registration is:

- ☐ ATTACHED⁷, or ☐ has been submitted previously and has not changed; and

- 3) Maintains (i.e., owns, leases or otherwise controls) facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis with access that is not limited or restricted other than by charging an admission fee. A description of the schedule during which the facility is open to the public (e.g., a public notice or brochure advertising this information) is:

- ☐ ATTACHED⁷, or ☐ has been submitted with a previous Marine Mammal Transfer/Transport Notification

MARINE MAMMAL NOTIFICATION (Continued)**V. CERTIFICATION**

I hereby certify that this notice and any attached supplemental information is complete, true and correct to the best of my knowledge and belief. I understand that this information is submitted in compliance with the Marine Mammal Protection Act of 1972 (MMPA) (16 U.S.C. 1361 et seq.), and regulations (50 CFR Part 216), and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001 or to penalties provided under the MMPA of 1972, as amended.

SHIPPER:**RECEIVER:**_____
Signature of Responsible Person⁸_____
Signature of Responsible Person⁸_____
Name of Responsible Person⁸_____
Name of Responsible Person⁸_____
Title⁸_____
Title⁸_____
Facility Name/Company_____
Facility Name/Company_____
Street Address_____
Street Address_____
Mailing Address, if different_____
Mailing Address, if different_____
City/State/Zip Code_____
City/State/Zip Code_____
Phone Number_____
Phone Number_____
FAX Number (optional)_____
FAX Number (optional)_____
Email Address (optional)_____
Email Address (optional)_____
Primary Contact (if other than Responsible Person)_____
Primary Contact (if other than Responsible Person)**VI. PLEASE SUBMIT THIS NOTIFICATION, MARINE MAMMAL DATA SHEETS AND SUPPLEMENTAL INFORMATION BY RETURN/RECEIPT MAIL TO:**

Permits Division - F/PR1
Marine Mammal Inventory
Office of Protected Resources
National Marine Fisheries Service
1315 East West Highway, #13706
Silver Spring, MD 20910

OR

By Facsimile to (301) 713-0376

PLEASE NOTE: NOTIFICATIONS must be **received** at least 15 days before the date of transfer/transport. A Marine Mammal Data Sheet for each animal involved must be attached also.

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, search existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information to complete this form. Send comments regarding this burden estimate or any other aspect of this collection of information to the Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless the collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

NOTES

1. The Marine Mammal Protection Act of 1972, as amended (MMPA) (16 U.S.C. 1361 et seq.) requires that the National Marine Fisheries Service (NMFS) be given 15 days' advance notification before the transfer/transport of most marine mammals (cetaceans and pinnipeds, except for walrus), and that the U.S. Fish and Wildlife Service (FWS) be given 15 days' advance notification of any walrus, polar bear, manatee sp., dugong, marine otter or sea otter. To ensure compliance with MMPA requirements, NMFS recommends persons transferring/transporting marine mammals submit this notification in the attached format (i.e., Marine Mammal Transfer/Transport Notification). The NMFS receipt date is the start date of the required 15 days notification. NMFS will accept a transfer/transport notification by facsimile ONLY IF: (a) the facsimile transmitted is complete, signed and in the attached format; and (b) the original is forwarded to NMFS by express mail and received within three working days. If the marine mammals are listed as endangered or threatened under the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531 et seq.) or subject to the Convention on International Trade in Endangered Species (CITES), permit and other requirements of the ESA and CITES must be met.

Persons exporting marine mammals must comply with the EXPORT requirements described on the back of this page. Permits are required for the IMPORTATION of marine mammals, for their CAPTURE from the wild, or for the RETENTION of rehabilitated beached and stranded marine mammals that have been determined releasable (i.e., in lieu of the release and re-capture of such marine mammals under a capture permit, a permit must be issued for their retention.) Permits are also required to obtain marine mammals for scientific research or enhancement purposes from captive stock, whether by transfer from another person/facility or by retention of non-releasable rehabilitated beached and stranded stock. NMFS written authorization (not a permit) is required to retain or obtain for public display purposes rehabilitated beached and stranded stock determined non-releasable (i.e., this required authorization is in addition to the 15 days' advance notification required for any transfer/transport.) Requests for authorization to obtain or retain such marine mammals must be submitted to NMFS after the determination is made that release to the wild is not feasible and at least 15 days' before their transfer/transport or use for public display purposes; and at least 60 days before their proposed export. (See the reference to beached and stranded marine mammals on the back of the Marine Mammal Data Sheet.)

A notice of receipt of permit applications is required by statute to be published in the Federal Register and applications and supporting documentation are available for review by the public at every stage of processing and during the life of the permit. The provisions at 50 CFR 216.33 implement these statutory requirements, and are referenced in and attached to the Application Instructions. All permit documentation including reports and the information required herein, is subject to the Freedom of Information Act (FOIA) with personal or sensitive information that is subject to the Privacy Act redacted when released under FOIA.

2. This is a planned or target date ONLY. Where a specific target date cannot be identified, a period of up to seven days may be identified instead (e.g., 1/4 - 1/18). Actual transfer/transport may occur on a different date but may not occur until at least 15 days following NMFS receipt of the transfer/transport notification.
3. "Shipper" means a person (i.e., any individual or public or private entity) with permanent custody of the marine mammal to be transferred/transported. All marine mammal transports between facilities/location require notification regardless of whether such facilities are owned, operated or otherwise controlled by the same or different persons, or whether the transfer/transport is temporary or permanent.
4. "Receiver" means a person (i.e., any individual or public or private entity) that is receiving the marine mammals to be transferred/transported. Receiver who obtains marine mammals for public display purposes must meet the three requirements of Section IV, including maintaining (i.e., owning, leasing or otherwise controlling) facilities at the receiving location for the public display of marine mammals.
5. The name of the shipper/receiver need not be the same as the facility. The shipper/receiver may be a person or corporate entity that owns/operates several facilities; or the shipper/receiver may hold marine mammals in multiple facilities. In any case, and particularly in circumstances where the name of the shipper/receiver is different from the facility, NMFS requests that the facility be identified.
6. Standards for education and conservation programs developed and endorsed by the American Association of Zoos and Aquariums (AZA) and the Alliance of Marine Mammal Parks and Aquariums (Alliance), representing approximately 60% of the U.S. marine mammal public display community, were published in the *Federal Register* on October 6, 1994 (59 FR 50900). Please call the Permits Division at the number below or write to the address listed in Section VI if you would like a copy of this notice. If applicable, the AZA/Alliance standards may be referenced as the standards on which your education or conservation program is based by simply checking the applicable "box." However, please note that while these professionally recognized standards have been provided by the AZA and Alliance, they represent only two examples of such standards. Other professionally recognized standards of the public display community may differ from these examples. If your education or conservation program is based upon different professionally recognized standards of the public display community, please provide a copy of those standards. NMFS maintains a record of such standards for reference purposes only.
7. Please attach this documentation only if the standards or restriction on public access have changed or if your Exhibitor's License has changed or been renewed since your last submission of this information.
8. Principal Officer, Director, President or other person with responsibility for and authority to determine the disposition of the marine mammals involved.

QUESTIONS?

If you need assistance in completing a Marine Mammal Transfer/Transport Notification, please contact the Permits Division at the address listed in Section VI or call us at (301) 713-2289.

Foreign persons/facilities receiving custody of marine mammals by EXPORT from the United States must meet standards that are comparable to those applicable to persons transporting and receiving custody of marine mammals in the United States for purposes of public display, scientific research or enhancement. This means, for example, that export for scientific research or enhancement purposes requires issuance of a permit under the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 et seq.). However, marine mammals may be exported for public display purposes without an MMPA permit if either: the marine mammals to be exported are being held for public display purposes and Shipper and Receiver submit a Marine Mammal Transfer/Transport Notification and comply with the export-specific requirements listed below; OR the marine mammals to be exported are being held for scientific research or enhancement purposes, or are non-releasable marine mammals from rehabilitated beached and stranded stock, and NMFS authorizes the export of such marine mammals after Shipper and Receiver comply with the export-specific requirements listed below. In the latter case, i.e., where marine mammals to be exported are being held for a purpose other than public display, NMFS may determine that a 30-day opportunity for public comment is necessary and, therefore, authorization must be requested at least 60 days in advance of such a proposed export.

Please note that the notification required for the export of marine mammals presently being held for public display must be accompanied or preceded by documentation meeting transfer/transport and export requirements, including a letter from the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) stating that the foreign facility concerned meets standards comparable to those applicable to U.S. licensees and registrants under the Animal Welfare Act (7 U.S.C. 2131 et seq.). Similarly, NMFS must receive an APHIS comparability determination before authorizing the export of marine mammals presently being held for purposes other than public display; i.e., marine mammals being held for scientific research or enhancement purposes or non-releasable marine mammals from rehabilitated beached and stranded stock. To make this MMPA-required comparable standards determination, the foreign Receiver must submit sufficient documentation to APHIS on which to base such a determination, or be inspected by an APHIS inspector or other person designated by APHIS at the expense of the importer or exporter. When documentation is submitted, the foreign government involved must certify its accuracy. Please contact Animal Care, APHIS, Riverdale, MD 20737 (301-734-7833) for guidance concerning documentation or inspection options.

Subsequent transfer/transport of exported marine mammals, or their progeny, between foreign holders of such marine mammals must adhere to the above requirements. Foreign transfer/transport notifications must be submitted to NMFS through the appropriate agency of the foreign government (e.g., the Convention on International Trade in Endangered Species (CITES) management authority). A Marine Mammal Transfer/Transport Notification must be submitted at least 15 days before the transfer/transport of exported marine mammals between facilities located in the same country. Before exported marine mammals are transported/exported to another foreign country, the Shipper and Receiver must submit a Marine Mammal Transfer/Transport Notification AND the government of the foreign Receiver must submit the certification statements listed below. Although an MMPA permit may not be required for public display exports, any person exporting or importing protected species, including marine mammals, must comply with other applicable U.S. law and may need to obtain a CITES permit. Information concerning CITES permit requirements is available from the Office of Management Authority, U.S. Fish and Wildlife Service, U.S. Department of the Interior, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203 (703-358-2104).

In summary, to export marine mammals for purposes of public display :

The foreign Receiver must:

- (1) Offer an education or conservation program comparable to one that is based on professionally recognized standards of the U.S. public display community;
- (2) Meet standards comparable to the requirements that a person in the United States must meet to be registered or be issued a license under the Animal Welfare Act (7 U.S.C. 2131 et seq.); and
- (3) Maintain facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis with access that is not limited or restricted other than by charging an admission fee.

AND

The appropriate agency of the foreign government (e.g., the Convention on International Trade in Endangered Species (CITES) management authority of the government) must submit a statement certifying that:

- (1) The information submitted concerning the foreign facility is accurate;
- (2) The laws and regulations of the government involved permit that government's enforcement of requirements comparable to the requirements of the U.S. Marine Mammal Protection Act (MMPA) and Animal Welfare Act (AWA), and that government will enforce such requirements; and
- (3) If it is determined that the foreign facility no longer meets the requirements of the MMPA applicable to export for public display, the government concerned will afford comity to an enforcement decision that may be made by NMFS, including seizure or arrangements for other disposition of marine mammals exported from the United States and the progeny of such marine mammals and the recovery of expenses for such seizure or other disposition.

All three certification statements are required by NMFS to ensure compliance with MMPA requirements. APHIS requires only that the accuracy of the information be certified as a prerequisite for making a comparability determination.

MARINE MAMMAL DATA SHEET

NOAA FORM 89-882

NOTES:

The Marine Mammal Protection Act of 1972, as amended (MMPA) (16 U.S.C. 1361 et seq.) requires that persons holding marine mammals submit certain information to the National Marine Fisheries Service (NMFS). The MMPA requires that NMFS maintain an inventory of all marine mammals held for public display purposes under the authority of the MMPA (i.e., all marine mammals held captive except for those in captivity before December 21, 1972). In addition, the MMPA requires that NMFS be given 15 days' advance notification before the transfer/transport of any marine mammal. To ensure compliance with these and related MMPA requirements, NMFS recommends that persons holding marine mammals captive for purposes of public display, scientific research, or enhancing the survival or recovery of species or stocks, use this *Marine Mammal Data Sheet* to submit captive marine mammal information to NMFS. Use of this form will ensure that MMPA-required information is submitted in a consistent manner and that the NMFS inventory of captive marine mammals is accurate and up-to-date.

Marine Mammal Data Sheets should be used when submitting information to NMFS in compliance with MMPA requirements applicable to persons holding marine mammals, including notifications of any additions/changes to your marine mammal inventory due to:

- Birth, Death, or Transfer/Transport (Notification required)
- Retention or transfer of Rehabilitated Beached and Stranded stock (Authorization or Permit required)
- Wild Capture, Import, Reintroduction to the wild, including release or escape (Permit required)
- Other (Corrections, etc.)

The animal-specific information in Section II will not change, whereas the marine mammal-related data in Sections I, III and/or IV will change with changes in custody or facility/location. In accordance with MMPA requirements, NMFS requests notification of any change in custody or facility/location, including captive births and deaths. A copy of the Marine Mammal Inventory-Summary (MMIRS) for each holder (i.e., person or other entity with custody of one or more marine mammals) will be provided periodically for verification and may be requested at any time by writing to the Permits Division at the address listed below.

All permit documentation including reports and the inventory information required herein, is subject to the Freedom of Information Act (FOIA) with personal or sensitive information that is subject to the Privacy Act redacted when released under FOIA.

Marine Mammal Transfer/Transport Notifications

NMFS recommends that:

1. Shippers complete Section I-III of the Marine Mammal Data Sheet for each marine mammal being transferred/transported.
2. These *Marine Mammal Data Sheets* should be attached to the *Marine Mammal Transfer/Transport Notification* and forwarded first to the Receiver and then to NMFS. The *Marine Mammal Transfer/Transport Notification* must be received by NMFS at least 15 days prior to the actual transfer/transport date. (See note below regarding beached and stranded marine mammals.)
3. At any time within 30 days after transfer/transport, the Receiver should forward to NMFS an updated *Marine Mammal Data Sheet* for each marine mammal actually transferred/transported (i.e., Section I and, if necessary, Section III updated to verify receipt).

Beached and Stranded Marine Mammals - Retention or Transport

The retention or transport/retention of rehabilitated beached and stranded marine mammals requires a permit or written authorization under the MMPA. A permit is required to retain or obtain such marine mammals for purposes of scientific research or enhancing the survival or recovery of species or stocks, or to retain or obtain such marine mammals for public display purposes where such animals have been determined releasable. Where such marine mammals have been determined non-releasable, NMFS authorization is required to retain or obtain them for public display purposes. Please contact the Permits Division at the number or address below for information on submitting such a permit application or authorization request.

QUESTIONS?

If you need assistance in completing a Marine Mammal Data Sheet, please contact the Permits Division at (301) 713-2289 or write to us at:

**Permits Division - F/PR1
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway, Rm. 13705
Silver Spring, MD 20910-3282**

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, search existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information to complete this form. Send comments regarding this burden estimate or any other aspect of this collection of information to the Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless the collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

they also will become a matter of public record.

Dated: March 12, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03-6592 Filed 3-18-03; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031403D]

Proposed Collection; Comment Request; Basic Requirements for All Marine Mammal Special Exception Permits to Take, Import and Export Marine Mammals, and for Maintaining a Captive Marine Mammal Inventory under the Marine Mammal Protection Act, the Fur Seal Act, and the Endangered Species Act.

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 19, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Amy Sloan or Ruth Johnson at 301-713-2289, or to Amy.Sloan@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The respondents will be applicants for and holders of scientific research and enhancement permits, commercial and educational photography permits, public display permits for captures and first-time imports, and Letter of Confirmation holders under the General

Authorization for Level B scientific research projects. The Marine Mammal Protection Act (MMPA), the Fur Seal Act (FSA) and the Endangered Species Act (ESA) prohibit the taking, import, and export of marine mammals with certain exceptions. Applicants desiring a permit or authorization to take, import, or export must provide certain information to be used as a basis for determining whether the proposed activity is consistent with the purposes, policies, and requirements of the MMPA, ESA, and/or FSA and if a permit or authorization should be issued. Permit holders and authorized researchers under the General Authorization are required to report periodically on activities conducted and species taken to ensure compliance with permit conditions and protection of the animals. This also updates information as necessary on any marine mammals held captive for purposes of maintaining the marine mammal inventory as required under the 1994 Amendments to the MMPA.

There is no overlap or duplication for marine mammal permit actions under the ESA as the marine mammal regulations (50 CFR 216.32 - 216.44) address requirements of both laws, and a single application and permit covers all requirements of both.

II. Method of Collection

Most application material is paper and written to respond to a required format. Some reports can be submitted electronically.

III. Data

OMB Number: 0648-0084.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households; business or other for-profit organizations; not-for-profit institutions; Federal Government; and State, Local, or Tribal Government. The majority of the affected public will be from the scientific research community, photographic journalists, and public display facilities. *Estimated Number of Respondents:* 493.

Estimated Time Per Response: 29 hours for an application for a scientific research or enhancement permit; 20 hours for an application for a public display permit; 10 hours for an application for a photography permit; 19 hours for a major amendment to a permit; 3 hours for a minor amendment to a permit or for a change to a General Authorization; 2 hours for a request to retain or transfer a rehabilitated marine mammal; 1 hour for a foreign government certification and comity statement for a public display export

request; 30 minutes for notification of a public display capture or import; 2 hours for a notification of and report on a public display capture; 30 minutes for an emergency transfer waiver of notifications; 30 minutes for an initial escape report; 1 hour for an one-week status report on an escape; 2 hours for a six-month status report on an escape; 12 hours for a scientific research/enhancement annual or final report; 2 hours for public display or photography permit annual or final report; 8 hours for a General Authorization annual or final report; 2 hours for a marine mammal inventory (1 hour for a transport notification, 30 minutes for a data sheet and a person/holder/facility sheet); and 2 hours for recordkeeping.

Estimated Total Annual Burden

Hours: 6,462.

Estimated Total Annual Cost to Public: \$1,000.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 12, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03-6593 Filed 3-18-03; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010203E]

Marine Mammals; File No. 1026-1671

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.